

## **Exhibit B**

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION,  
GENERAL EQUITY PART  
ESSEX COUNTY  
DOCKET NO. ESX-C-000248-16  
APP. DIV. NO. \_\_\_\_\_

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SCOTT PHILLIPS, :  
: Plaintiff, : TRANSCRIPT  
: v. : OF  
: ARCHDIOCESE OF NEWARK and : DECISION OF THE COURT  
: ST. THERESA'S SCHOOL, :  
: Defendants. :  
\_\_\_\_\_

Place: Wilentz Justice Complex  
212 Washington Street  
Newark, NJ 07102

Date: August 14, 2017

BEFORE:

HONORABLE DONALD A. KESSLER, J.S.C.

TRANSCRIPT ORDERED BY:

CHRISTOPHER H. WESTRICK, ESQUIRE (Carella, Byrne,  
Cecchi, Olstein, Brody & Agnello, P.C.)

APPEARANCES:

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I N D E X

<u>BY THE COURT:</u>	<u>PAGE</u>
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1 (Trial commenced at 1:51 p.m.)  
 2 THE COURT: Please be seated.  
 3 Okay. This is the matter of Phillips versus  
 4 The Archdiocese of Newark.

5 Counsel, your appearances for the record?  
 6 MS. McCREA: Good afternoon, Your Honor.

7 Susan McCrea on behalf of plaintiff.  
 8 MR. WESTRICK: Good afternoon, Your Honor.

9 Christopher Westrick and John Kelly from Carella Byrne  
 10 on behalf of defendants.

11 THE COURT: Okay. Everyone can be seated.  
 12 Okay. The Court is going to deliver its

13 opinion now. It is my hope that I won't have to step  
 14 off the bench for a break, but it's possible I may.  
 15 We'll see how it goes.

16 Okay. For the purpose of my decision, the  
 17 pertinent facts are, as follows:

18 Saint Theresa's R.C. Church is a New Jersey  
 19 religious corporation, incorporated under Title 16 of  
 20 the New Jersey Statutes and it is located at 541  
 21 Washington Avenue, Kenilworth, New Jersey. Saint  
 22 Theresa's operates as a catholic parish, fulfilling  
 23 the spiritual needs of parishioners. Saint Theresa's  
 24 was formed exclusively for religious, charitable and  
 25 educational purposes.

1 Saint Theresa's operates a religious school,  
 2 STS -- Saint Theresa's School, which will be referred  
 3 to as STS -- which educates primary school children  
 4 with respect to their academic and spiritual  
 5 educational needs. STS educates children from  
 6 kindergarten through 8th grade, and also operates a  
 7 preschool program.

8 The Roman Catholic Archdiocese of Newark is  
 9 a not-for-profit corporation comprised of parishes,  
 10 schools and other related entities operating in Essex,  
 11 Bergen, Hudson and Union Counties. The Archdiocese  
 12 was formed exclusively for religious, charitable and  
 13 educational purposes. Saint Theresa's Church and its  
 14 operations, including STS, are governed by the  
 15 Archdiocese of Newark. The Archdiocese of Newark  
 16 provides pastoral services for approximately 1.3 to  
 17 1.6 million parishioners.

18 Plaintiff Scott Phillips, his wife Theresa  
 19 Mullen, their two children, S.P. -- two daughters,  
 20 S.P. and K.P., and son, B.P., are parishioners of  
 21 Saint Theresa's parish. Mr. Phillips and his wife  
 22 have been parishioners at Saint Theresa's for 17  
 23 years. They have -- their three children -- B.P., age  
 24 15; S.P., age 13; and K.P., age 11 -- have all  
 25 attended primary elementary school at SPS -- I'm sorry

1                   -- STS from preschool through their entire elementary  
 2                   school education. B.P. now attends Seton Hall Prep.  
 3                   S.P. has completed the 7th grade and K.P. has  
 4                   completed the 5th grade last June.

5                   Mr. Phillips and Ms. Mullen were married 17  
 6                   years ago at Saint Theresa's. They have been active  
 7                   members of the parish regularly attending services and  
 8                   having developed a personal relationship with a  
 9                   recently-retired pastor, Father Joe Bejgrowicz.

10                  The Phillips children were baptized at the  
 11                  church and have volunteered to be alter servers  
 12                  throughout the years. S.P. and K.P. have a number of  
 13                  friends, relationships with teachers, and a  
 14                  comfortable familiarity with Saint Theresa's School.  
 15                  They have volunteered to participate in many school  
 16                  activities. In S.P.'s case, she has been elected  
 17                  student council treasurer and has played on sports  
 18                  teams in the CYO league with other STS children in  
 19                  sports, such as basketball, volleyball and softball.

20                  On December 2, 2016, plaintiff Scott  
 21                  Phillips, on behalf of his daughter, S.P., and his  
 22                  son, B.P., filed a complaint before this Court  
 23                  alleging several claims against the defendants. The  
 24                  complaint alleges bullying and harassment of S.P.,  
 25                  failure by STS administrators to address sexually

1                   inappropriate behavior, threat of violence with a  
 2                   knife, exclusion of S.P. and another child at a school  
 3                   sponsored trunk-or-treat event, and victimization of  
 4                   S.P.

5                   Plaintiff's complaint also alleges that his  
 6                   son, B.P., was an outstanding student at STS. He  
 7                   claims his son was in the running to become  
 8                   valedictorian of his class. Both Mr. Phillips and his  
 9                   wife, Ms. Mullen, testified at trial that B.P.  
 10                  received a subjective grade from S.P.'s home room  
 11                  teacher, the lowest grade he received during his  
 12                  education at STS. They claim the grade was lowered,  
 13                  because S.P. was mistreated and bullied by the  
 14                  teacher. They complained that the grade by S.P.'s  
 15                  biased home room teacher affected B.P.'s ability to  
 16                  become valedictorian and, therefore, he became the  
 17                  salutatorian, rather than the valedictorian of his  
 18                  class. Ms. Mullen testified that she sought a  
 19                  justification of this grade so she could explain these  
 20                  circumstances to B.P., but never got a satisfactory  
 21                  response.

22                  Plaintiff's complaint further alleges that,  
 23                  beginning in early 2016, S.T. [sic] made numerous  
 24                  complaints to her home room teacher about  
 25                  inappropriate sexual behavior and harassing behavior

1 taking place in the classroom. According to plaintiff  
 2 and Ms. Mullen, S.P. was thwarted for a period of time  
 3 by her home room teacher from reported this behavior.  
 4 Somewhat later, another teacher allowed S.P. to report  
 5 her complaint about the sexual and harassing  
 6 misconduct to the principal. Plaintiff claims that  
 7 S.P. continued to report ongoing inappropriate  
 8 behavior, principally by other male students, and  
 9 claims that she was taunted by STS personnel, parents  
 10 and other students.

11 Plaintiff and Ms. Mullen also testified at  
 12 one point S.P. was threatened with a weapon and shown  
 13 a picture of a non-STS student holding a gun.  
 14 Plaintiff and Ms. Mullen also reported that they  
 15 believed that she was taunted by another STS parent  
 16 and excluded from participating in the school -- STS  
 17 parents' school sponsored trunk-or-treat event at one  
 18 of the car locations for that event.

19 Mr. Phillips and Ms. Mullen claimed during  
 20 their testimony that SPS -- that S.P. was re-victimized  
 21 by STS and Archdiocese personnel, who did nothing to  
 22 respond to her complaints. At trial, Mr. Phillips and  
 23 Ms. Mullen testified they went to Saint Theresa's  
 24 School on a number of occasions to address the  
 25 improper conduct and the actions against their children

1 at the school.

2 Ms. Mullen testified that she obtained --  
 3 attempted to obtain resolution of her concerns from  
 4 STS administrators. After her perceived failure of  
 5 school administrators to address these concerns, she  
 6 worked her way up the chain of Archdiocese personnel  
 7 to address her concerns and have them appropriate --  
 8 appropriately remedied. She testified that she wrote,  
 9 had meetings, and/or telephone conversations with the  
 10 Archdiocese superintendent of school, Dr. Margaret  
 11 Dames, and the assistant superintendent overseeing STS  
 12 school, Sister Patricia Butler. She also wrote to  
 13 Cardinal Tobin, the archbishop of Newark, to seek his  
 14 aid in addressing her concerns.

15 Plaintiff claims that defendants, through  
 16 their authorized representatives, engaged in a pattern  
 17 of retaliatory activity as a result of efforts by S.P.  
 18 and her parents to protect S.P. in school and from  
 19 abuse by teachers and other parents. They further  
 20 believe that appropriate steps had not been taken to  
 21 address their concerns which affected S.P.'s  
 22 education, as well as the education of their other  
 23 children.

24 The Archdiocese operates a CYO basketball  
 25 league. The league has over 100 teams and 1,000

1 participants in separate boys and girls leagues for  
 2 the 2016-2017 season. At the beginning of the season,  
 3 an insufficient number of girls volunteered to play on  
 4 the girls' basketball team in S.P.'s age group.  
 5 Therefore, STS was unable to field a girls' team in  
 6 that age group for the CYO league.

7 Ms. Mullen requested the league officials  
 8 allow S.P. to play on the boys' team in her age group,  
 9 since there was no girls' team in that age group. She  
 10 also requested, based on seniority as a coach, that  
 11 she be appointed head coach of the boys' team and that  
 12 the team's coach assume the role of assistant coach.  
 13 Her request was denied by Richard Donovan, the  
 14 administrator of the league. Plaintiff and Ms. Mullen  
 15 asked other Archdiocese representatives to reverse Mr.  
 16 Donovan's decision, but they refused.

17 Plaintiff and Ms. Mullen testified that the  
 18 decision to exclude S.P. from the basketball team was  
 19 also retaliation for their complaints and S.P.'s  
 20 complaint about the bullying and harassing behavior  
 21 she experienced. They also argue that S.P.'s exclusion  
 22 from the boys' basketball team was discriminatory and  
 23 was not prohibited by league rules.

24 At the time that the complaint was filed,  
 25 December 2, 2016, plaintiff sought an interlocutory

1 injunction allowing defendants -- compelling  
 2 defendants to allow S.P. to play on the STS CYO boys  
 3 basketball team. The complaint also sought removal of  
 4 unspecified personnel, damages and recision of federal  
 5 funding of Saint Theresa's sports program if such  
 6 funding was made under Title 9 of the federal anti-  
 7 discrimination laws.

8 On February 1, 2017, STS expelled S.P. and  
 9 K.P. from STS. The Appellate Division stayed the  
 10 expulsion on February 2, 2016 and remanded this matter  
 11 to this Court for a determination as to whether the  
 12 expulsion should be permitted.

13 On February 15, 2017, Cardinal Tobin  
 14 rescinded the expulsion.

15 On February 17, 2017, this Court ordered  
 16 that S.P. be allowed to play on the boys basketball  
 17 team.

18 Discord arose between many members of the  
 19 STS community and the Phillips family, resulting in an  
 20 online petition seeking their removal. There were  
 21 also various Facebook posts in which various members  
 22 of the community objected to their participation in  
 23 the STS community.

24 On March 1, 2017, plaintiff and Ms. Mullen  
 25 made a motion to amend the complaint in this case to

1 have more than 80 defendants affiliated with the STS  
 2 community joined as a part of the complaint and adding  
 3 Ms. Mullen as a complaint -- plaintiff. This Court  
 4 dismissed most of the amended complaint. In the time  
 5 it arrived before this Court, there was actually a  
 6 third amended complaint. And that denial was made  
 7 without prejudice to repleading and refiling that  
 8 pleading.

9 On April 2, 2017, the Archdiocese issued a  
 10 letter through Dr. Dames refusing to re-enroll S.P.  
 11 and K.P. at STS for the 2017-2018 school year.

12 Plaintiff amended his lawsuit claiming  
 13 breach of contract and that the non-re-enrollment was  
 14 retaliation for his efforts to seek to protect his  
 15 children.

16 Defendants, the Archdiocese of Newark and  
 17 Saint Theresa's, claim the non-re-enrollment of the  
 18 children was an ecclesiastical decision which was  
 19 based on the inability of Saint Theresa's School to  
 20 function peacefully. Specifically, they claim the  
 21 aggression of Mr. Phillips and Ms. Mullen, as parents,  
 22 interfered with the peace and tranquility of the  
 23 school community and inhibited the school from  
 24 realizing its ecclesiastical mission.

25 Defendants further claim that they had a

1 secular right to deny re-enrollment to the children  
 2 because of disruptive behavior of their parents.  
 3 Defendants point out that the enrollment contracts  
 4 between the defend -- between Saint Theresa's School  
 5 and other parents are one-year contracts which are  
 6 separately entered into each year and they would be  
 7 the same contract that would also be offered to Mr.  
 8 Phillips and Ms. Mullen. Defendants claim they had no  
 9 legal obligation to enter a new one-year contract with  
 10 Mr. Phillips and Ms. Mullen to re-enroll S.P. and K.P.  
 11 for the upcoming academic year starting on September  
 12 6th.

13 In analyzing this case, the more detailed  
 14 factual -- a more detailed factual background is  
 15 necessary and warrants consideration. Specifically,  
 16 the following:

17 In or around May 2016, S.P. complained to  
 18 her mother that she witnessed inappropriate behavior,  
 19 such as gyrating and sexually offensive comments by  
 20 boys in her class. She also indicated she was  
 21 threatened with a knife. S.P. told her mother about  
 22 inappropriate words and classroom talk, much of which  
 23 was of an inappropriate sexual nature. Ms. Mullen set  
 24 up a meeting with the school's principal, Sister  
 25 Hélène Godin.

1 Sister Hélène had been a Catholic school  
 2 principal for nearly 30 years and was a member of the  
 3 Salesian order. The Salesian educational philosophy  
 4 under which Sister Hélène administered STS was, quote,  
 5 "reason, religion and kindness," unquote. She  
 6 understood her mission to develop the whole child body  
 7 and soul.

8 At the time of the meeting, Sister Hélène  
 9 served as principal for approximately six years. She  
 10 testified that as soon as this issue was brought to  
 11 her, she spoke to the teacher involved and she also  
 12 contacted the local police to report the threat of the  
 13 use of the knife. Plaintiff scheduled -- Mr. Phillips  
 14 scheduled appointments with Sister Hélène later that  
 15 month. Sister -- as did Ms. Mullen. Sister Hélène  
 16 investigated the sexual allegations, imposed what she  
 17 deemed to be appropriate discipline upon the offending  
 18 students. Because discipline upon the offending  
 19 students was confidential to that minor and the  
 20 student's family, the discipline taken was not shared  
 21 with Ms. Mullen.

22 Later that month, Ms. Mullen had an  
 23 interaction with B.P.'s teacher, home room teacher,  
 24 Sister Juliet (phonetic), who was also -- Ms. Mullen  
 25 complained that, as a result of the interaction, that

1 S.P. had with Sister Juliet (phonetic), her son B.P.  
 2 received a grade of 74 on a test and he also received  
 3 an 85 percent score on a test in which he answered 14  
 4 out of 15 questions correctly.

5 Ms. Mullen acknowledged that the mathematical  
 6 difference on the 85 percent test grade may be  
 7 attributable to the weight of the answers. Ms. Mullen  
 8 claims she was compelled to pursue the grading issue,  
 9 because she could not get an adequate response to  
 10 enable -- to explain -- her to explain to B.P. why the  
 11 grade was not higher.

12 Sister Hélène met with Ms. Mullen about this  
 13 issue at the end of May. On June 1, 2016, Mr. Phillips  
 14 then met with Sister Hélène about B.P. achieving the  
 15 status of valedictorian of his class. Mr. Phillips  
 16 claimed that he wanted to know in advance how the  
 17 valedictorian calculation would be arrived at, since  
 18 the previous year there was a .01 percent difference  
 19 between the valedictorian and the salutatorian. He  
 20 also claimed that he told Sister Hélène that he needed  
 21 this information advanced of the announcement of the  
 22 valedictorian since his son and the son of close  
 23 friends were the top students. He, therefore, wanted  
 24 to avoid conflict with the other family, who were  
 25 personal friends.

1 Sister Hélène testified that Mr. Phillips  
 2 threatened her that if B.P. was not named  
 3 valedictorian, Ms. Mullen would analyze every grade  
 4 and the school better have a good explanation for that  
 5 decision. Sister Hélène agreed that B.P. was a strong  
 6 student, but pointed out that there were other bright  
 7 students in the class. She testified that the meeting  
 8 ended with Mr. Phillips stating he hoped the  
 9 conversation was not useless. Mr. Phillips claims  
 10 Sister Hélène promised to let him know in advance of  
 11 the announcement of the valedictorian award.

12 On June 3rd, two days later, the grades were  
 13 tabulated and B.P. earned the honor of salutatorian.  
 14 Sister Hélène called Mr. Phillips about his son  
 15 receiving the honor of salutatorian. According to  
 16 Sister Hélène, plaintiff responded by voicing his  
 17 outrage that he did not get notice in advance and  
 18 called her a son of a bitch. Sister Hélène indicated  
 19 that she found the words, tone and content of the June  
 20 3 conversation to be threatening, bullying and  
 21 demeaning. Plaintiff denied the use of the phrase son  
 22 of a bitch, but indicated he was upset.

23 During her testimony, Sister Hélène was  
 24 visibly shaking -- shaken when she was recalling the  
 25 events in the entirety of the discussions about the

1 valedictorian issue. Her demeanor on the stand  
 2 indicated that her feelings of being intimidated were  
 3 credible, because, as the Court indicated, she did  
 4 seem, even while testifying about it, to be shaken.  
 5 Sister Hélène testified that she stepped down as  
 6 principal and claimed that she lost confidence as a  
 7 result of this hostility.

8 Mr. -- plaintiff offered testimony to  
 9 minimize his conduct, claiming that Sister Hélène did  
 10 not keep her word and he admitted he was angry. His  
 11 testimony seemed to be contradictory. He said she  
 12 broke her word, but said she was not a liar. Her --  
 13 his -- Mr. Phillips' efforts to parse words in  
 14 explanation supported Sister Hélène's view of his  
 15 hostility.

16 On June 3, 2016, Ms. Mullen had another  
 17 meeting with Sister Hélène in which she -- in which  
 18 Sister Hélène explained the decision. Ms. Mullen was  
 19 not satisfied with the efforts of Sister Hélène to  
 20 address her concerns.

21 On June 6, 2016, Ms. Mullen wrote to Dr.  
 22 Margaret Dames, superintendent of the Archdiocese  
 23 schools. Dr. Dames acts as the chief administrator of  
 24 the network of Archdiocese schools, overseeing more  
 25 than 90 primary and secondary schools which the

1 Archdiocese operates. The Archdiocese educates over  
 2 30,000 students. Dr. Dames reports directly to the  
 3 Archbishop, Cardinal Tobin, about the operation of the  
 4 Archdiocese schools. Cardinal Tobin relies on her  
 5 management and is rarely involved in individual student  
 6 decisions, because of the number of issues that he  
 7 needs to oversee.

8 Ms. Mullen complained in her June 6th letter  
 9 referenced above that there was a pattern of behavior  
 10 that negatively affected S.P., resulting in S.P. being  
 11 re-victimized and her son, B.P., being negatively  
 12 affected. In her letter, she -- both Dr. Dames and  
 13 Sister Hélène explained how they resolved each of  
 14 these issues.

15 The first issue raised was that a picture  
 16 was shown to S.P. of a gun by a non -- a male non-  
 17 student at STS who was frequenting STS property. In  
 18 her testimony, Dr. Dames explained that the incident  
 19 was reported to the local police immediately. In  
 20 contrast, Ms. Mullen testified that neither she nor  
 21 her husband, a retired Kenilworth police captain,  
 22 reported the matter to the Kenilworth Police  
 23 Department. Dr. Dames appears to have taken  
 24 appropriate steps in her discretion to resolve the  
 25 problem and there was no testimony at trial that this

1 problem ever resurfaced.

2 The second issue was Ms. Mullen reported  
 3 that there were sexually inappropriate behavior of  
 4 boys gyrating on desks and boys making sexually  
 5 inappropriate statements to girl students. Ms. Mullen  
 6 testified that the boys made offending sexual comments  
 7 and were the perpetrators. Ms. Mullen testified that  
 8 other parents also made appointments with Sister  
 9 Hélène to express outrage about this behavior. At  
 10 trial, Ms. Mullen clarified that two boys were  
 11 involved. Sister Hélène and Dr. Dames testified that  
 12 appropriate discipline was imposed. The boys are  
 13 minors. The discipline was not discussed with Ms.  
 14 Mullen.

15 Ms. Mullen was asked for an interview with  
 16 S.P. by the administration, but that interview was  
 17 refused, claiming that it would re-victimize her. And  
 18 she also refused to identify the offending boys,  
 19 saying that information was already known to Sister  
 20 Hélène. It escapes the Court to understand why, if  
 21 this information was known, it couldn't be provided to  
 22 make sure there was no error. Ms. Mullen agreed in  
 23 her cross-examination that the offending conduct did  
 24 not occur during the following school year and,  
 25 therefore, that conduct likewise appeared to be

1 appropriately remedied.  
2

3 In her letter, as a third grievance, Ms.  
4 Mullen complained about a substitute teacher's  
5 inappropriate conduct. That conduct was likewise  
6 addressed by the teacher being removed from the  
7 substitute teacher's list.

8 The fourth issue addressed, which was the  
9 heart of a series of letters, complained about B.P.'s  
10 grade and plaintiff and Ms. -- and Mr. Phillips and  
11 Ms. Mullen's dissatisfaction that they were not  
12 informed of the valedictorian selection prior to its  
13 announcement. In that letter, contrary to Mr.  
14 Phillips' testimony, Ms. Mullen stated that plaintiff  
15 could not believe that Sister Hélène lied to her --  
16 lied to him. In his testimony, Mr. Mullen  
17 specifically -- Mr. Phillips specifically said --  
18 refused to say that he was lied to. Ms. Mullen  
19 indicated that she and her husband met with Sister  
20 Hélène, but were not satisfied with the answer. Ms.  
21 Mullen concluded her June 6th letter stating, quote:  
22

23 "By way of this letter, I am requesting an  
24 immediate meeting with the Archdiocese before  
25 graduation tomorrow evening. I am requesting the  
written policy of how the  
valedictorian/salutatorian is computed be

1 provided to me, including how the advanced math  
2 class is weighted, together with exactly how it  
3 was calculated this year, with backup figures, so  
4 that I can confirm that it was accurately done."

5 And that letter is, I believe, P-23A in  
6 evidence.

7 Ms. Mullen couched her request in terms of  
8 giving closure to her son for not being named  
9 valedictorian. However, the demand of an immediate  
10 meeting, the otherwise argumentative remarks made by  
11 Mr. Phillips in his meeting and phone call with Dr. --  
12 with Sister Hélène, were an effort to control the  
13 grading process and to change the valedictorian award.  
14 The Court is satisfied that Dr. Dames and Sister  
15 Hélène were exercising appropriate judgment and were  
16 not required to respond to angry micro management.

17 Parenthetically, the Court notes that the  
18 Phillips' complaints about these matters were rooted  
19 in advancing their son's best interests. Their  
20 complaint about S.P.'s experiences were likewise  
21 rooted in S.P.'s best interests. However, Mr. Phillips  
22 and Ms. Mullen appeared to lost objectivity and sought  
23 the resolution of their grievances by taking an  
24 extremely confrontational approach, rather than a  
25 conciliatory approach.

1                   In response to Ms. Mullen's letter, Dr.  
2 Dames assigned the investigation of Ms. Mullen's June  
3 6th complaints to one of her superintendents, Sister  
4 Patricia Butler. Dr. -- as mentioned above, Dr. Dames  
5 oversees the education of approximately 30,000  
6 students. Therefore, she relies on associate  
7 superintendents, including Sister Butler.

8                   Ms. Mullen spoke to Sister Butler on June 7,  
9                   2016. Ms. Mullen sent a further letter to Sister  
10                  Butler on June 8, 2016 and that letter likewise  
11                  complained about the valedictorian selection. In her  
12                  letter, Ms. Mullen stated, quote:

20 Ms. Mullen's letter went on to state, quote:

21                    "If the Archdiocese refuses to give me this  
22 information, I remind STS and the Archdiocese by  
23 way of this letter that both have been put on  
24 notice to preserve all requested materials, in  
25 the event they are not voluntarily given to me.

1 and that additional action needs to be taken."

This letter characterizes actions of Saint Theresa's School as being bullying and harassment of her family and characterizes that behavior as, quote, "deplorable," unquote, and that is -- that letter is joint ex -- Plaintiff's Exhibit 23-2B, I believe. However, in making such claims, Ms. Mullen failed to appreciate the way in which her words would be received by religious educators and did not consider that her efforts to protect her son had gone too far.

On June 15, 2016, Ms. Mullen wrote to Dr. Dames complaining she did not have closure on the valedictorian issue. At the end of her letter, she stated, quote: "Please be advised that if no response by week's end, I will have no other choice than to take this matter to the next level. I hope this is not necessary." Period, unquote. And that's P-23-2C.

22 On June 27, having received Sister Butler's  
23 June 13th correspondence, Ms. Mullen wrote to Sister  
24 Butler stating she would not provide the names of the  
25 boys who engaged in sexually inappropriate behavior,

1 even though she said the information could be obtained  
 2 from Sister Hélène and was obviously known to her.

3 In the fall of 2016, at the beginning of the  
 4 school year, the registration period for CYO basketball  
 5 began. Several girls who were on S.P.'s basketball  
 6 team in the prior year at STS had graduated and there  
 7 were not enough girls to form a girls' team at STS for  
 8 S.P.'s age group for the season -- for the 2016-2017  
 9 league year.

10 Applications for participation were sent to  
 11 students on September 19, 2016. Richard Donovan, the  
 12 associate director of the league, claimed he advised  
 13 Ms. Mullen on September 28, 2016 that the roster  
 14 submission deadline for the league was October 25th  
 15 and that if there were not enough applicants to form a  
 16 STS girls' team, efforts would be made to place Saint  
 17 Theresa's girl students on a neighboring team.

18 Ms. Mullen denied this conversation ever  
 19 took place and claimed she was not advised of a  
 20 deadline. Ms. Mullen claimed that she first learned  
 21 from another parent that the deadline from -- to form  
 22 a girls' team had passed and she immediately asked  
 23 that she be permitted to solicit the late formation of  
 24 a girls' team, as she was allowed to do in the prior  
 25 year. Her request was refused and she then requested

1 that S.P. be placed on the Saint Theresa's 7th grade  
 2 boys' team. Ms. Mullen requested S.P.'s placement on  
 3 the boys' team, because of S.P.'s deep sense of  
 4 loyalty to STS and because of her desire to  
 5 participate in the school spirit of STS. She did not  
 6 want S.P. to play for a neighboring girls' school  
 7 team.

8 Ms. Mullen claimed that applications were  
 9 accepted from two boys to play on the boys' team after  
 10 the deadline and that CYO rules did not prohibit S.P.  
 11 from playing on the boys' team. Mr. Donovan, the  
 12 league director, denied her request. Mr. Donovan also  
 13 was an STS parent, but was functioning in the capacity  
 14 as league director, an entirely different role.

15 On October 18, 2016, S.P.'s sister, K.P.,  
 16 received a written warning notice from her gym  
 17 teacher, Brittany Dvorscak. According to Ms. Dvorscak,  
 18 students were told to stop talking in the hallway or  
 19 they would receive a warning notice. While Ms.  
 20 Dvorscak was not -- did not testify at trial, the  
 21 Court got testimony from witnesses on both sides about  
 22 this incident. On her way back from gym class, Ms.  
 23 Dvorscak advised Deacon Joe that K.P. continued to  
 24 talk. She received a written warning notice for  
 25 excessive talking.

14 On October 28, 2016, there was an STS-  
15 sponsored, quote, trunk-or-treat, unquote, event.  
16 This annual event revolves around parents decorating  
17 their cars and dispensing candy, having their personal  
18 cars function as the equivalent of a Halloween home.  
19 According to Ms. Mullen, S.P. came home from the  
20 trunk-or-treat car event complaining that she was  
21 belittled at one location by one of the parents,  
22 reducing her to tears.

On November 4, 2016, Ms. Mullen wrote a letter to the principal, Deacon Joe Caporaso, claiming -- complaining about the actions of the parent at the

1 trunk-or-treat event and also complaining about the  
2 rejection of S.P.'s basketball registration forms. In  
3 her correspondence, she pointed out that she had met  
4 with Deacon Joe earlier in October to discuss the  
5 difficulty of fielding a girls basketball team the  
6 prior year. Deacon Joe characterized this meeting as  
7 a history lesson on STS's girls basketball. Based on  
8 that information that she previously provided to  
9 Deacon Joe, Ms. Mullen expressed her belief that the  
10 late registration should be accepted and also  
11 complained about STS's [sic] treatment at the trunk-or-  
12 treat.

13 After receiving the e-mail, Deacon Joe met  
14 with Ms. Mullen and suggested she try to work out the  
15 trunk-or-treat problem with the offending parent via  
16 direct conversation with that parent. In fact, at  
17 trial, Deacon Joe testified that the two parents had  
18 different versions of the story and he believed that  
19 it would be more appropriate for the parents to work  
20 this out between themselves. He also indicated he had  
21 no knowledge about the sports program and no interest  
22 in sports programs, and that Ms. Mullen should reach  
23 out to league officials.

24 On November 8, 2016, Ms. Mullen wrote to Dr.  
25 Dames and Sister Butler complaining that S.P. had been

1 re-victimized at the trunk-or-treat event and  
 2 requested an immediate investigation into CYO -- into  
 3 the CYO basketball league director's conduct in  
 4 thwarting S.P.'s participation on the boys' team, since  
 5 there was no girls' team. She also indicated she  
 6 wanted to be named as head coach of the boys' team.  
 7 She demanded a written response from STS and the  
 8 Archdiocese. At the end of the letter, she stated,  
 9 quote: "If I fail to receive a response by the close  
 10 of business tomorrow, I will have no other choice but  
 11 to take all the aforementioned to the next level,"  
 12 unquote. P-23-2E.

13 On November 18, 2016, Ms. Mullen wrote to  
 14 Dr. Dames stating she would -- she was making a final  
 15 request for a meeting and concluded the letter by  
 16 saying, quote: "If a meeting is not scheduled by the  
 17 close of business today, I will have no choice but to  
 18 file the appropriate legal work on Monday, which I  
 19 hope is not necessary," unquote.

20 On November 22, 2016, plaintiff and Ms.  
 21 Mullen met with Sister Butler and Dr. Dames. At the  
 22 meeting, in view of the impending litigation, Dr. Dames  
 23 recommended the Phillips' attorney reach out to the  
 24 Archdiocese attorney to attempt to come to the res --  
 25 to a resolution. It appeared at the meeting that a

1 resolution was not possible and that the matter may  
 2 well come to litigation. It was the hope that if the  
 3 attorneys were to talk to each other, the litigation  
 4 could be avoided.

5 On December 2, 2016, plaintiff filed the  
 6 initial complaint in this matter, seeking, among other  
 7 things, that S.P. be permitted to play basketball on  
 8 the boys' team.

9 Shortly after the complaint, Mr. Phillips  
 10 called his boyhood friend, Kevin Kernan, a sports  
 11 writer for the New York Post. Plaintiff testified  
 12 that he thought that S.P.'s desire to play on the  
 13 boys' team was a human interest story which would  
 14 appeal to the press. He stated he wanted the story to  
 15 get out accurately and, therefore, contacted his  
 16 boyhood friend, Mr. Kernan.

17 In his testimony, Mr. Phillips conceded that  
 18 Mr. Kernan is a highly respected and widely read  
 19 sports writer. Mr. Phillips denied contacting the  
 20 newspaper to obtain leverage; however, he admitted  
 21 that he freely made himself and his children available  
 22 to other media outlets for interviews. Mr. Phillips  
 23 refused to acknowledge that the press attention could  
 24 have a negative effect on the Saint Theresa's community  
 25 and that the public attention from the basketball

1 dispute was a cause for concern for the community,  
2 including the administrator -- its teachers, the  
3 administrators and families.

4 The information that defendants received  
5 from parents and/or administrators was that the press  
6 coverage initiated by Mr. Phillips was disrupting the  
7 peaceful operation of the school -- Catholic school  
8 community.

9 During this case, the Court agreed it would  
10 not hear testimony of individuals communicating about  
11 this matter with the defendants. Rather, this Court  
12 said it would hear testimony about this information to  
13 obtain evidence as to the perception that defendants  
14 had about these complaints and the action that was  
15 resulted from those reports. And in so doing, this  
16 Court relied on Carmona v. Resorts International Hotel,  
17 189 N.J. 354, 376 (2007) and Toto versus Princeton  
18 Township, 404 N.J.Super. 604, 619 (Appellate Division  
19 2009).

20 On February 1, 2016, defendants made a  
21 decision to expel the children from Saint Theresa's  
22 School. The expulsion letter was delivered to  
23 plaintiff by defendants' counsel by an e-mail sent  
24 after office hours. Defendants' counsel advised  
25 plaintiff's counsel that he children were expelled and

1 should not return to school the next day.

2 The February 1 letter was issued by Dr. Dames  
3 and indicated that S.P. and K.P. would be asked not to  
4 return to the school. In her letter, Dr. Dames stated  
5 that on August 30, 2016, plaintiff executed an  
6 acknowledgment accepting the rules and regulations of  
7 the school. Dr. Dames' letter pointed out that the  
8 student handbook stated that, quote: "If a parent  
9 implicates Saint Theresa's in a legal matter or names  
10 Saint Theresa's School as defendants in a civil  
11 matter, the parents/guardians will be requested to  
12 remove their children immediately from the school."  
13 Period, unquote. Exhibit J-1.

14 Plaintiff and Ms. Mullen received the e-mail  
15 from their attorney while they were attending a New  
16 York Liberty Basketball Team practice with S.P. and  
17 one of her friends. They claim that the manner and  
18 timing of the expulsion was a further act of  
19 retaliation precipitated by plaintiff actively  
20 pursuing a litigation seeking S.P.'s right to play  
21 basketball on the boys' team.

22 The next morning, plaintiff and Ms. Mullen  
23 brought the children to Saint Theresa's School. Mr.  
24 Phillips left Ms. Mullen, S.P. and K.P. at the school.  
25 He then brought B.P. to Seton Hall Prep. Shortly

1 thereafter, Deacon Joe, the principal, asked Ms.  
2 Mullen to meet with him in the office to discuss the  
3 expulsion, since he did not want to address the matter  
4 publicly, but preferred to do so in private. He was  
5 accompanied at the meeting by Father Joe, the pastor  
6 of Saint Theresa's Church, and Father Vincent.

7 Ms. Mullen was asked to leave the by Deacon  
8 Joe. She refused. Deacon Joe then read a statement  
9 to Ms. Mullen prepared by defendants' counsel stating  
10 that the children were expelled from school, that Ms.  
11 Mullen must leave the school grounds, and that if she  
12 did not leave the building, that trespass charges  
13 would be brought against her. Ms. Mullen refused to  
14 leave the building, stating, among other things, that  
15 she would not leave without a court order and without  
16 an explanation upon which the expulsion was based.  
17 Ms. Mullen did not leave the building immediately, but  
18 left the building eventually. A trespass complaint  
19 was signed by Father Joe.

20 Plaintiff presented testimony from Mark  
21 Bergamotto, a close personal friend and STS parent,  
22 about the events of February 2. Mr. Bergamotto's  
23 testimony was wholly incredible. He testified he  
24 parked his car strategically to watch the events of  
25 February 2. His testimony appeared to be calculated

1 and could not be believed.

2 On February 2, 2016 [sic], the Archdiocese  
3 issued a press release indicating the student handbook  
4 contained a provision that students would be expelled  
5 immediately if the parents initiated litigation  
6 against STS and that Mr. Phillips agreed in writing to  
7 this term in the handbook.

8 The trespass incident is a truly unfortunate  
9 part of this case. There is little doubt that, in  
10 this instance, both parties could have exercised  
11 better judgment. Neither side took the initiative to  
12 first discuss this matter off the school grounds.  
13 Sadly, the Phillips children, S.P. and K.P., were  
14 brought to school by her [sic] parents that day and  
15 witnessed some of these unfortunately events. Both  
16 parties should have taken responsibility for the  
17 position in which the Phillips children were placed.

18 Plaintiff filed an application with the  
19 Court to stay the expulsion of S.P. and K.P. The  
20 removal of the children from the school was enjoined  
21 by the entry of a stay issued by the Appellate  
22 Division. That order enjoined the removal pending a  
23 hearing by this Court and remanded the matter to this  
24 Court to determine whether the removal should be  
25 authorized or should be vacated.

1 On February 2, 2016 [sic], the Phillips  
2 children -- or February 3, 2016 [sic], the Phillips  
3 children returned to school.

4 Cardinal Tobin was installed as Archbishop  
5 of Newark beginning in January 2017. He read about  
6 the expulsion of the Phillips children in a newspaper  
7 and also read that some girls had been playing on a  
8 boys CYO team, resulting in that team's exclusion from  
9 further play in the boys basketball league. Cardinal  
10 Tobin perceived S.P.'s expulsion to be based on her  
11 desire to play basketball. He believed that decision  
12 was misplaced. He expressed sympathy for S.P., due in  
13 part to the fact that he has eight sisters and several  
14 nieces. He also learned that the coed team forfeited  
15 games in the boys' league for violation of the league  
16 rules. He reversed the exclusion of the coed team  
17 from playing in the boys' league. He further learned  
18 that S.P. and K.P.'s expulsion was based on a student  
19 handbook provision that a student could be expelled if  
20 parents were bringing a lawsuit against the defendants.  
21 He did not agree with that policy and asked the  
22 handbook provision to be eliminated.

23 On or about February 17, 2017, this Court  
24 entered an order compelling the addition of S.P. to  
25 the 7th grade boys' team, a decision founded in large

1 part on the fact that the Court -- this Court learned  
2 that girls were permitted to play on another boys'  
3 team in the CYO league. Initially, this Court had  
4 been advised that there were only separate boys' and  
5 girls' teams participating in the CYO league. Based  
6 on this evidence, the Court denied the initial  
7 application to allow S.P. to play on the boys' team.  
8 After the additional information was provided to the  
9 Court that girls were playing on a boys' team in the  
10 league, this Court changed its ruling and ordered that  
11 S.P. be allowed to play basketball on the boys' team  
12 for the remainder of the current season.

13 Plaintiff points out that this Court was  
14 provided with false submissions in and around December  
15 2016 that no girl played on any boy team -- boys' team.  
16 However, the individual responsible for this  
17 information, Mr. Donovan, was not a witness in this  
18 case, thus whether [sic] the incorrect information  
19 provided with this -- with respect to an earlier issue  
20 was not the subject matter of testimony in the hearing  
21 on the re-enrollment issue.

22 On February 15, 2017, Cardinal Tobin issued  
23 a press release in which he rescinded the expulsion of  
24 S.P. and K.P. The press release also state the coed  
25 team would be allowed to finish its play in the boys'

1 league for the current season.  
2

3 Deacon Joe testified at trial that a  
4 disruptive atmosphere at STS intensified dramatically  
5 after S.P. and K.P. returned to school in February.  
6 He received verbal and written communication from STS  
7 parents expressing concerns about the disruptive  
8 atmosphere at school, which other STS parents perceived  
9 was caused by the Phillips family.

10 The STS parents were concerned about the  
11 disruption caused by the lawsuit over basketball, the  
12 intense media attention that followed, and the  
13 disruptive effect of the reinstatement of the children  
14 by the Court. Some of the parents who wrote to Deacon  
15 Joe complaining that [sic] the Phillips family wanted  
16 to remain anonymous out of alleged fear of retribution  
17 by the Phillips family.

18 As mentioned previously, the Court did not  
19 consider this evidence as to whether or not it was  
20 truthful, this -- rather, this evidence was reviewed  
21 to determine what action was taken by the defendants  
22 as a result of this information.

23 Deacon Joe testified that on the day of the  
24 expulsion, news vans had been parked adjacent to the  
25 school grounds of the church and had also been parked  
there on other occasions. He stated that a 2nd grader

1 -- all because of this case, the Phillips' case. He  
2 stated that a 2nd grader expressed her desire not to  
3 attend STS in the future because of the presence of  
4 news vans. Another student asked to be dismissed  
5 through the back door, rather than the front door,  
6 because of the news vans' presence.

7 He also pointed out that several parents  
8 signed an online petition voicing their concerns about  
9 the uproar created by this information -- by this  
10 litigation. The petition itself, which was placed in  
11 evidence by the plaintiffs, was signed by dozens of  
12 individuals who complained about comments to the media  
13 and what they perceived to be disparaging remarks  
14 about the school and its students, and the overall  
15 disruption that they felt the public attention of this  
16 litigation was causing.

17 Plaintiffs stated that -- or were of the  
18 belief that the petition was endorsed by STS, but I  
19 will get to it a little later. Actually, Sister --  
20 Dr. Dames specifically tried to stop the petition and  
21 neither STS nor the Archdiocese have any power to take  
22 down that petition. What they did about is, Dr. Dames  
23 asked members of the community not to sign it anymore  
24 and teachers were told by Deacon Joe and by Dr. Dames  
25 that they were not to sign such a petition going

1 forward. So, they did try to act. They were also  
2 told that any Facebook -- the teachers were told not  
3 to post negative facebook posts and members of the  
4 community were likewise asked to stop such behavior.  
5

6 Given the controversy which arose at the  
7 time the Phillips children returned to school, Dr.  
8 Dames, as superintendent of schools, decided to hold  
9 parent meetings at STS to calm down the situation and  
10 to refocus all the parents on the mission of the  
11 school to educate the children in a loving and  
12 nurturing environment. Dr. Dames wanted to restore a  
13 tranquil and cooperative environment. For that  
14 reason, she scheduled listening sessions for February  
15 22, 2017. Dr. Dames first met with approximately 14  
16 teachers. The -- she then met with parents in groups  
17 of ten. It was her goal to bring the focus of the  
18 school back to joy and optimism, consistent with its  
19 ecclesiastical mission.

20 Ms. Mullen attended the first listening  
21 session on February 22. At those -- the listening  
22 sessions, Dr. Dames asked for the online petition to  
23 be stopped from everyone who was at the -- at those  
24 listening sessions, and when -- and she also learned  
25 at those sessions for the first time that there were  
Facebook posts, and she also asked for the negative

1 Facebook posts to stop.  
2

3 It was her aim in having this meeting to  
4 calm tensions and restore harmony in the school  
5 between all parents and teachers, including Ms. Mullen  
6 and Mr. Phillips. She asked for the cooperation of  
7 the school community on refocusing their attention to  
8 create a positive environment. Dr. Dames urged the  
9 parents to be positive and to stop negative  
10 interactions, so the educational mission could move  
forward.

11 On the very next day, February 23, 2017, Ms.  
12 Mullen wrote to Cardinal Tobin complaining that she  
13 and her family had been victims of negative statements  
14 by Mr. Donovan, the director of the CYO, negative  
15 Facebook posts by STS parents and the online petition  
16 by various STS parents and teachers. Ms. Mullen asked  
17 for an opportunity to meet privately with Cardinal  
18 Tobin to discuss her concerns and, quote, "if at all  
19 possible, before the new set of legal papers are to be  
20 filed on March 1, 2017." Thus, she gave Cardinal  
21 Tobin an ultimatum that if he did not meet with her  
22 within the next six days, and presumably satisfy her  
23 concerns, further litigation would follow. Cardinal  
24 Tobin claimed he never saw this letter prior to trial.  
25 Plaintiff and Ms. Mullen filed the motion to

1 amend the complaint, seeking to add Ms. Mullen as a  
 2 plaintiff and suing at least 80 individuals associated  
 3 with the STS community and Archdiocese personnel,  
 4 including Father Joe and Dr. Dames.

5 Dr. Dames testified that the filing of the  
 6 lawsuit showed that there was not going to be an easy  
 7 resolution of the dispute between the parties. Her  
 8 testimony subjected [sic] that her objective to calm  
 9 the controversy was undermined by Mr. Phillips and Ms.  
 10 Mullen filing this amended lawsuit.

11 After the filing of the lawsuit, the uproar  
 12 at STS intensified. Deacon Joe observed the new  
 13 lawsuit and ongoing presence of the press continued to  
 14 cause disruption at the school and interfered with its  
 15 normal functioning. He understood that parents,  
 16 teachers and students were fearful because of their  
 17 interactions with the Phillips family and were fearful  
 18 of reprisals.

19 Again, as I indicated, this testimony was  
 20 not considered for the truth of the matter, but in  
 21 terms of the conduct that it caused on the part of  
 22 Deacon Joe.

23 Deacon Joe likewise testified that he was  
 24 intimidated by the Phillips family. He recommended to  
 25 Dr. Dames, superintendent of the schools, and Reverend

1 Monsignor Thomas Nydegger, the vicar general and  
 2 moderator of the curiae of the Archdiocese, that the  
 3 Phillips family not be allowed to re-enroll S.P. and  
 4 K.P. for the following school year.

5 Reverend Monsignor Nydegger acts as second  
 6 in command in the administration of the ecclesiastical  
 7 and secular activities of the Archdiocese. It is  
 8 hardly unusual -- highly unusual for Monsignor Nydegger  
 9 or Cardinal Tobin to be consulted about school  
 10 decisions.

11 Both Dr. Dames and Monsignor Nydegger  
 12 concluded that the actions taken by Mr. Phillips and  
 13 Ms. Mullen escalating the lawsuit and by adding new  
 14 claims against the Archdiocese, suing STS employees  
 15 and volunteers -- and this was more -- I'm sorry. I  
 16 take that back. This was more about Monsignor  
 17 Nydegger's testimony, not Dr. Dames. And that suing  
 18 80 individuals for expressing their opinion was  
 19 inconsistent with the Catholic mission of STS and  
 20 undermined its pastoral objectives. He, therefore,  
 21 recommended to Cardinal Tobin that he decide -- that  
 22 he endorsed the decision not to re-enroll S.P. and  
 23 K.P. Dr. Dames, likewise, made such a recommendation.

24 Cardinal Tobin testified that he learned  
 25 about the proposed expansion of the lawsuit. He also

1 learned from Sister Hélène of the incredible pressure  
2 she and faculty were under as a result of the conduct  
3 of the Phillips family. Cardinal Tobin stated that he  
4 did not know about the extent of the controversy at  
5 the school when he rescinded the February expulsion  
6 and at this later time, after the recommendation was  
7 made to him not to re-enroll, he -- he got -- he  
8 received much more information about what happened  
9 earlier.

10 At the time that Cardinal Tobin rescinded  
11 the expulsion, he assumed the expulsion was because of  
12 a dispute over basketball. He learned in the recent  
13 meetings that the problem was not basketball, but  
14 rather that plaintiff's actions had upset the  
15 tranquility of the school. When he saw the litigation  
16 expanded, Cardinal Tobin was astounded. He became  
17 aware of letters written by parents complaining about  
18 the Phillips family and came to understand the  
19 detrimental effect of the aggressive steps taken by  
20 Mr. Phillips and Ms. Mullen.

21 In reinstating the children earlier, it was  
22 Cardinal Tobin's aim that the children would be  
23 integrated in the school and everyone would move on.  
24 He was -- he felt that the profoundly expanded  
25 litigation was inconsistent with his decision to

1 rescind the expulsion.

2 Cardinal Tobin does not get involved in day-  
3 to-day decisions of the Archdiocese school. He  
4 testified that it is impractical or impossible for him  
5 to oversee more than 90 Catholic primary and secondary  
6 schools. Therefore, there is a school superintendent,  
7 Dr. Dames, who oversee the operations.

8 Cardinal Tobin believed in making his  
9 decision, the peace and tran -- that the tranquility  
10 and well-being of the STS community necessitated his  
11 decision. He indicated that the decision was not  
12 intended to be punitive and he was considering the  
13 well-being of the entire community. He emphasized  
14 that only a serious reason would get him to approve  
15 the decision.

16 On March 22, 2017, the Archdiocese issued a  
17 press release indicating a lawsuit had been filed  
18 against the Archdiocese and STS and they intended to  
19 defend, quote, "this baseless lawsuit," unquote. The  
20 statement was placed in the backpack of each student.  
21 Plaintiff and Ms. Mullen claimed that this -- the  
22 placement of the press release in the backpacks was an  
23 effort to target and embarrass their children.  
24 Archdiocese witnesses indicate that the statement was  
25 sent out to members who wanted to know how the issue

1 was being handled. The statement was also posted on  
 2 the wall of the church, which the plaintiff and Ms.  
 3 Mullen claimed was embarrassing and traumatizing to  
 4 their children. However, other press releases were  
 5 also posted in the church.

6 Further, more significantly, the Court is  
 7 puzzled how Mr. Phillips and Ms. Mullen could not see  
 8 that their escalation of this controversy would not  
 9 generate a reaction. Defendants were in need to let  
 10 the parishioners know how it will respond to a very  
 11 controversial matter. Based on the credible testimony  
 12 of Deacon Joe and Dr. Dames's sincere concerns about  
 13 the uproar in the STS community, it is evident that  
 14 the press release was aimed at letting the STS  
 15 community know that the defendants would protect the  
 16 members of that community.

17 It should be noted that Deacon Joe was  
 18 forthright in his testimony and his testimony also  
 19 indicated that he was visibly shaken by these events.  
 20 He testified that in his many years as a school  
 21 administrator he had not witnessed such an intense  
 22 controversy.

23 Dr. Dames, a seasoned administrator with 30  
 24 years of experience, likewise testified her perception  
 25 of the uproar caused by the Phillips family by writing

1 letters and expressions was the most extreme  
 2 controversy she had ever witnessed.

3 On June 29, 2017, plaintiff filed a motion  
 4 to compel defendants to re-enroll S.P. and K.P. at  
 5 STS. A hearing was held before the Court on June 29th.  
 6 After the hearing, the Court entered an order  
 7 scheduling a plenary hearing.

8 On June 29th, the Archdiocese issued a press  
 9 release referencing the motion and the attacks made by  
 10 plaintiff and Ms. Mullen in the court papers.

11 On June 29th, the Archdiocese issued a  
 12 further press release reflecting its disappointment of  
 13 the scheduling of a plenary hearing and expressing  
 14 optimism that it would prevail in defeating plaintiff's  
 15 re-enrollment application.

16 The statements -- these statements were  
 17 published in the Archdiocese bulletin. Plaintiff  
 18 claims that publication of these documents, in which  
 19 the Archdiocese publicly defended itself against the  
 20 plaintiff action, re-victimized their family.  
 21 Unfortunately, blinded by the desire to protect their  
 22 children, the plaintiff and Ms. Mullen could only see  
 23 their point of view and did not consider the reaction  
 24 that their actions would cause. They also failed to  
 25 see how the confrontational manner in which they

1       voiced their concerns would be perceived.  
2

3       It is important to emphasize that the  
4       decision not to re-enroll S.P. and K.P. had nothing to  
5       do with the successful efforts of plaintiff to allow  
6       S.P. to play basketball for the team. That decision  
7       was a product of the controversy. And I will address  
8       that specifically later in my decision the reasons why  
9       I believe that the refusal to re-enroll the children  
10      was totally unrelated to the Court's decision on the  
      basketball issue.

11      On June 11, 2017, Deacon Joe wrote a letter  
12      indicating that Saint Theresa's School fully agrees  
13      with and endorses the ecclesiastical decision regarding  
14      the denial of S.P. and K.P.'s re-enrollment for the  
15      2017-2018 school year, as set forth in the April 3  
16      correspondence written by Dr. Dames which indicated  
17      the children would not be re-enrolled. Both letters  
18      were sent to Mr. Phillips and Ms. Mullen.

19      The Court is convinced that Mr. Phillips and  
20      Ms. Mullen were attempting to act in their children's  
21      best interests. Unfortunately, Mr. Phillips and Ms.  
22      Mullen, out of love for their children, chose an  
23      extremely confrontational approach and did not  
24      evaluate the circumstances objectively. Sister Hélène,  
25      Deacon Joe, Sister Butler, and Dr. Dames all attempted

1       to respond to their concerns. Both Mr. Phillips and  
2       Ms. Mullen did not objectively absorb the efforts  
3       being made to address their concerns. They  
4       intensified, rather than resolved problems. In fact,  
5       many of the complaints they referenced were about  
6       previously resolved issues. Rather than moving on  
7       from resolved issues, they piled issues on top of  
8       resolved issues.

9       On April 3, 2017, as the Court indicated, an  
10      ultimate decision was made to decline to re-enroll  
11      them in the school. The STS community has about 80  
12      families and about 200 students. The Archdiocese and  
13      STS determined the need to be mindful of the pastoral  
14      needs of the entire STS community. Defendants  
15      ultimately took steps to control the disruptive  
16      atmosphere that Mr. Phillips and Ms. Mullen created.

17      Now, I'd like to turn to the applicable  
18      legal principles. And to get to those, I also need to  
19      do somewhat of a -- some legal analysis.

20      On or about March 1, 2017, plaintiff filed  
21      an amended complaint. Thereafter, the Court directed  
22      plaintiff to amend and supplement its complaint to  
23      address the non-re-enrollment issue which came up  
24      after the filing of the amended complaint. As  
25      indicated previously, in that complaint plaintiff and

1 Ms. Mullen, who was to be added as a plaintiff, sought  
2 to add approximately 80 individuals, including STS  
3 employees, parents of STS students, and members of the  
4 STS community for expressing opinions concerning the  
5 lawsuit.

6 On April 3, 2016 [sic], Dr. Dames,  
7 superintendent of schools, wrote a letter informing  
8 Ms. Mullen and Mr. Phillips that K.P. and S.P.'s  
9 re-registration application would not be accepted for  
10 the upcoming 2017-2018 school year. Her letter  
11 states, as follows:

12 "Dear Mr. Phillips and Judge [sic] Mullen:  
13 The Saint Theresa's School mission statement  
14 provides Saint Theresa's School -- Catholic  
15 School and the Archdiocese of Newark is dedicated  
16 to the cultivation of academic excellence and the  
17 spiritual social and emotional growth of each  
18 student. Our school nurtures an environment of  
19 cultural diversity in which a caring faculty,  
20 through the implementation of the education  
21 system of Saint John Bosco, based upon reason,  
22 religion and love and kindness, seeks to develop  
23 each student to his/her potential. With Christ  
24 and Mary as our examples, the Saint Theresa's  
25 community grows [sic] in a family atmosphere in

1 which each individual experiences respect,  
2 challenge, responsibility and exceptional love.

3 Actions and events initiated by you over  
4 the last several months have directly interfered  
5 with the fulfillment of this mission, not only  
6 for Saint Theresa's School, but for also for its  
7 administrators, staffs, students and parents. In  
8 order to restore the promise of a 'family  
9 atmosphere' characterized by 'respect, challenge,  
10 responsibility and exception love,' Saint  
11 Theresa's School will not be able to accept  
12 enrollment for the 2017-18 school year.

13 The decision has been made in this time in  
14 order to allow sufficient time for you to make  
15 alternate arrangements for -- alternative  
16 arrangements for next year. We wish good luck  
17 with -- the children good luck with their future  
18 endeavors. Thank you."

19 And that is, I believe, J-3 in evidence.

20 The non-re-enrollment decision was made  
21 after the February 22nd listening sessions and after  
22 efforts had been made to return to a spirit of peace  
23 and tranquility in the community. And the lawsuit  
24 that ensued and the ongoing press coverage that was  
25 generated upset that peace and tranquility.

1 Religious educational institutions have a  
2 constitutionally protected right to be free from civil  
3 court interference. This argument is rooted in the  
4 United States Supreme Court's decision in Watkins v.  
5 Jones, 80 U.S. 679 (1871). In Watson, the Supreme  
6 Court considered judicial involvement in a church's  
7 property dispute. The court was asked to determine  
8 whether a certain sect of the church had control over  
9 church property. The Supreme Court said that civil  
10 courts were not allowed to interfere in this property  
11 dispute and this case resulted in the following  
12 landmark principle. And this is a quote.

13                    "All who unite themselves to such a body do  
14                    so with an implied consent to this government,  
15                    and are bound to submit to it. But it would be a  
16                    vain consent and would lead to the total  
17                    subversion of such religious bodies if anyone  
18                    aggrieved by one of their decisions could appeal  
19                    to the secular courts and have them reversed. It  
20                    is of the essence of these religious unions, and  
21                    of their right to establish tribunals for the  
22                    decision of questions arising among themselves,  
23                    that those decisions should be binding in all  
24                    cases of ecclesiastical cognizance, subject only  
25                    to such appeals as the organism itself provides

1 for."

2 And I believe that's from page 729 of that

3 decision.

The rule announced by the court in Watson was, unless neutral principles of law apply, judicial decisions of ecclesiastical doctrine is banned under the First Amendment. The -- this rule was diluted in Gonzalez versus Roman Catholic Archbishop of Manila, 280 U.S. 1, where the court stated -- the Supreme -- the United States Supreme Court stated, quote:

11                    "In the absence of fraud, collusion, or  
12 arbitrariness, the decisions of the proper church  
13 tribunals on matters purely ecclesiastical,  
14 although affecting civil rights, are accepted in  
15 litigation before the secular courts as  
16 conclusive, because the parties in interest made  
17 them so by contract or otherwise."

24 "Whether or not there is room for 'marginal  
25 civil court review' under the narrow rubrics of

1 'fraud' or 'collusion' when church tribunals act  
2 in bad faith for secular reasons [sic], no  
3 'arbitrariness' exception -- in the sense of an  
4 inquiry whether the decisions of the highest  
5 ecclesiastical tribunal of a hierarchical church  
6 complied with church laws and regulations -- is  
7 consistent with the constitutional mandate that  
8 civil courts are bound to accept the decisions of  
9 the highest judicatories of a religious  
10 organization of hierarchical polity on matters of  
11 discipline, faith, internal organization, or  
12 ecclesiastical [sic], custom, or rule [sic]."

As a result, the Supreme Court eliminated the arbitrariness exception to the rule that civil courts are prohibited from adjudicating religious disputes. The Court has not revisited whether ecclesiastical -- whether civil courts can review ecclesiastical decisions for fraud or collusion, but they can't review them for arbitrariness. That's what the case says.

23 Since then, there has been further  
24 litigation about this issue before the various circuit  
25 -- federal Circuit Courts of Appeals and in many state

1       courts. A split of authority has developed with  
2       respect to state breach of contract and tort claims.  
3       Some courts have held that if an ecclesiastical issue  
4       underlies some of the claims, such a breach of  
5       contract claim, all of the claims should be dismissed,  
6       thereby precluding civil courts from exercising  
7       jurisdiction over any of those claims. Gaston versus  
8       Diocese of Allentown, 712 Atlantic Second. 757, which  
9       is, I believe, a Pennsylvania Supreme Court case from  
10      1998.

In that case, students at a Catholic school were expelled. The archdiocese and the -- were -- were sued and the principal were sued in tort for negligence and intentional infliction of emotional distress. And the court dismissed the complaint on jurisdictional grounds, stating that the action was an attempt to involve civil courts in an ecclesiastical custom or rule, as upheld by the bishop of the Roman Catholic Church.

20 There are cases in which personnel decisions  
21 can be reviewed by civil courts and there are cases  
22 where an employment matter can be looked at as a  
23 secular matter. One of such cases is Scharon v. Saint  
24 Luke's Episcopal Presbyterian Hospitals, 929 Fed.  
25 Second 360 (8th Circuit 1991).

1                   In this case, there are two counts in the  
2 amended -- in the third amended complaint which  
3 survived the motion to dismiss. The second count  
4 indicated that the defendants, Archdiocese and STS, in  
5 refusing to re-enroll the children were in breach of  
6 contract, it violated the handbook. And that count  
7 eight of the complaint indicated that they were  
8 wrongfully and improperly expelled in April 2017 in  
9 retaliation for the verified complaint, and in breach  
10 of contract, and that they also waived the provisions  
11 of the handbook.

12                  The case law throughout the country seems to  
13 support the notion that Catholic high schools for the  
14 most part should be -- that their ecclesiastical  
15 decisions should be followed. Following -- and  
16 recently, the -- there is a Pennsylvania case,  
17 Chestnut Hill College v. Pennsylvania Human Relations  
18 Commission, 158 Atlantic Third 251, which is a  
19 decision made by the Commonwealth Court of Pennsylvania  
20 on April 7, 2017. In that case on page 259, the court  
21 stated as follows:

22                  "Following Lemon versus Kurtzman, 403 U.S.  
23 602 (1971), this Court was persuaded that  
24 parochial high schools were an integral part of  
25 the Catholic mission, as 'a powerful vehicle for

1                   transmitting the Catholic faith to the next  
2 generation.' In so doing, we emphasized that the  
3 religious" --

4                  And in that case, they cited from Roman  
5 Catholic Archdiocese versus Pennsylvania Human  
6 Relations Commission, 548 Atlantic Second 328, which  
7 is also a Pennsylvania Commonwealth decision from  
8 1988. It went on to say that:

9                  "In so doing, we emphasized that the  
10 religious character of the parochial school --  
11 schools based on" -- "they [sic] emphasized the  
12 religious character of parochial schools based on  
13 several factors. They [sic] noted non-Catholic  
14 students were required to take religious [sic]  
15 classes and to attend Catholic services as a  
16 condition of attending [sic]. We reasoned that  
17 'parochial schools constituted an integral part  
18 of the religious mission of the Catholic church  
19 and this process of inculcating religious  
20 doctrine, is, of course, enhanced by the  
21 impressionable age of the pupils, in primary  
22 schools particularly."

23                  And in the Chestnut Hill case, the court  
24 indicated that the principles relating to Catholic  
25 high schools did not apply to colleges, but in drawing

1 the contrast between these two organizations, they --  
 2 the court said that, while there are material  
 3 differences between parochial primary and secondary  
 4 schools and college:

5 First, parochial schools educated children,  
 6 not students who typically reach the age of majority,  
 7 such which is the case with colleges.

8 Second, parochial schools were governed and  
 9 operated by the Roman Catholic Archdiocese of  
 10 Philadelphia, college is by one-fifth, plus one,  
 11 comprised of the Sisters of Saint Joseph's.

12 Third, Catholic instruction was a required  
 13 part of the curriculum at the parochial schools and  
 14 attending Catholic classes and masses was a condition  
 15 of attending the schools. College, by contrast, does  
 16 not require attendance at religious services and  
 17 religious instruction is available, but not required.

18 And the essence of the reasoning of that  
 19 case and of other cases is that Catholic high schools,  
 20 because they are unique in their mission, are of a  
 21 religious nature.

22 The establishment clause of the First  
 23 Amendment provides that Congress, quote, "shall make  
 24 no law respecting an establishment of religion."

25 Pursuant to Lemon versus Kurtzman, 403 U.S.

1 602 (1971), the stated action must have -- must (1)  
 2 have a secular purpose; (2) have a primary effect that  
 3 neither advances nor inhibits religion; and (3) not  
 4 foster excessive government entanglement with  
 5 religion.

6 With respect to this third criterion, the  
 7 determination of whether there is excessive  
 8 entanglement with church and state is conducted  
 9 through both substantive and procedural context.

10 Substantive entanglement -- McKelvey v.  
 11 Pierce, 173 N.J. 26, 41 to 42 (2002). Subjective [sic]  
 12 entanglement occurs when courts intrude into a  
 13 church's freedom to select, discipline or terminate  
 14 its ministers. Procedural entanglement occurs when  
 15 the state and church are matched against each other in  
 16 a protracted adversarial proceeding. Procedural  
 17 entanglement recognizes a church's substantive  
 18 freedoms and the impact of judicial intervention,  
 19 including extensive oversight of church activities.

20 In her letter, Dr. Dames articulated that  
 21 the re-enrollment decision was made for religious  
 22 reasons. This Court does not have the authority to  
 23 meddle in that decision, as it was based upon  
 24 ecclesiastical considerations. Cardinal Tobin  
 25 testified he was the ultimate decision-maker of the

1 non-re-enrollment decision. He made that decision  
2 because he felt it was necessary to restore the peace  
3 and tranquility of the school community, an  
4 ecclesiastical decision made for the benefit of  
5 achieving the school's mission.

6 In making this decision, he had the input of  
7 Dr. Dames and Reverend Nydegger. These trusted  
8 administrators consulted with him in making this  
9 decision for faith-based reasons. As discussed  
10 earlier, he explained his faith-based rationale at  
11 trial. On cross-examination, plaintiff's counsel  
12 asked Cardinal Tobin if he was aware of the sexual  
13 issues and the alleged harassment and bullying,  
14 harassment and -- and the harassment and intimidation  
15 of S.P. A number of these issues were resolved prior  
16 to Dr. Dames meeting with Cardinal Tobin, albeit not  
17 to Mr. Phillips' and Ms. Mullen's satisfaction.

18 If Cardinal Tobin did not make his decision  
19 on correct information, plaintiffs' remedy would be to  
20 go back to Cardinal Tobin as reflected in the  
21 handbook, J-3. Specifically, the handbook states on  
22 page 16 that with respect to an appeal to an expulsion  
23 decision, quote, "The written request must be made to  
24 the principal within five business days from the date  
25 of official communication by school administrators of

1 the disciplinary decision. Failure to request a  
2 hearing within these five business days forfeits the  
3 right to a hearing," unquote. And this is in the  
4 expulsion section of the handbook. This faith-based  
5 decision was made by church officials, and any appeal  
6 of that should have been made to church officials, not  
7 to this Court.

8 Plaintiff cites no case law which would  
9 allow this Court to interfere with the church's  
10 ecclesiastical mission. The Court knows there's no  
11 case law that would give this Court the authority to  
12 intrude upon such a decision because the ecclesiastical  
13 decision-maker did not know all the facts which  
14 plaintiff wanted the decision-maker to know.

15 The Court would be remiss if it did not  
16 emphasize that the plaintiffs' 2016 issues were  
17 resolved as to sexual misconduct and bullying, thus,  
18 plaintiffs' position, to the extent that it raises  
19 these issues time and again, seems to serve little  
20 purpose. While plaintiff and Ms. Mullen feel bullied  
21 and harassed by the reaction of the St. Theresa's  
22 community by posting the online petition, Facebook  
23 posts and the like, they ignore that they chose to air  
24 this matter out publicly. They now complain about the  
25 reaction it has caused.

1 Cardinal Tobin, Reverend Monsignor Nydegger,  
2 Dr. Dames, Principal Deacon Joe, and former principal  
3 Sister Helene testified credibly that their efforts  
4 were rooted in an effort to maintain peace and  
5 tranquility in the faith-based community. Dr. Dames  
6 wanted to stop this controversy on all sides, and on  
7 February 22nd she met with everyone, including Ms.  
8 Mullen, for that specific purpose. Plaintiff chose to  
9 pursue their grievances aggressively and in the most  
10 confrontational manner. The church officials' decision  
11 was based in attempting to restore its faith-based  
12 mission, the faith-based mission of its community.  
13 The Court does not have the jurisdiction to question  
14 these faith-based decisions.

This Court's view of this matter is supported by a number of out-of-state cases, various out-of-state cases. For example, in Calvary Christian Schools v. Huffstuttler, 367 Arkansas 117 (2006), a student was dis-enrolled from a religious school due to the actions of his parents. The Supreme Court of Arkansas held that the Court were without jurisdiction to rule on any of these claims arising out of this enrollment. Specifically, the Court found that this enrollment was due to the parents' failure to comply with Matthew 18 principles in the school's handbook.

1 The reasons included in the dis-enrollment  
2 letter reflected the school's ecclesiastical  
3 philosophy. The Court held that any and -- claims  
4 arising out of a dis-enrollment would therefore  
5 require the Court to determine whether the plaintiff --  
6 the plaintiffs did or did not comply with Matthew 18.  
7 This Court dis -- therefore, the Court dismissed the  
8 claims for lack of jurisdiction. In this case, the  
9 decision was based upon following the educational  
10 system of Saint John Bosco, based upon reason,  
11 religion, and loving kindness, and on the philosophy  
12 imparted upon the Catholic-based community by Christ  
13 and Mary, and that is not a decision for this Court to  
14 make.

Likewise, in Gaston v. Diocese of Allentown, which was discussed earlier, 712 A.2d 757, Pennsylvania Superior Court 1998, a Catholic school expelled the plaintiff's son and daughter after the principal felt threatened during an interaction with the plaintiff's father regarding a curriculum dispute. The plaintiffs brought the claim intentional and negligent infliction of emotional distress. The Court held, quote, "The question here, however, is not a property or contractual dispute. It is a claim that hits a tort law but is based upon an expulsion decision. Ratified

1 by the Bishop, it is our opinion not receptive to  
 2 application of neutral principles of law. The  
 3 Catholics' disciplinary code and review of expulsion  
 4 involves matter of church doctrine." Likewise, in  
 5 this case, the expulsion decision involved matters of  
 6 church doctrine.

7 Similarly, in In re St. Thomas High School,  
 8 495 SW.3d 500, Texas Appellate Court 2016, a Texas  
 9 appeals court ruled that the Court lacked jurisdiction  
 10 to hear a case whether parents of a student's alleged  
 11 sexual harassment against their son's teacher along  
 12 with other highly charged, slanderous accusations  
 13 after a dispute over a low grade. The school  
 14 investigated and found the claims to be unfounded, and  
 15 the parent later admitted they were unfounded.

16 As a result, the school expelled the child  
 17 because it would have been impossible -- difficult if  
 18 not impossible for the teachers to educate the student  
 19 without fear of similar retribution by the parents.  
 20 The parents then sued for breach of contract, specific  
 21 performance and injunctive relief. The Court  
 22 determined the decision was a result of a Catholic  
 23 school's management of its internal affairs and held,  
 24 quote, "If judicial resolution as a claim will  
 25 interfere with a church's management of its internal

1 affairs or encroach upon the church's internal  
 2 governance, the Court may not exercise jurisdiction  
 3 over the claim."

4 It bears emphasizing in this case that the  
 5 children in this case were expelled because -- not  
 6 because of their conduct but because of the conduct of  
 7 their parents, which interfered with the mission of  
 8 the church, and this Court is not authorized under law  
 9 to meddle in such activities.

10 In addition to the ecclesiastical reasons,  
 11 which standing alone would be a sufficient basis for  
 12 this Court to deny the request to rescind the non-re-  
 13 enrollment, there are also secular reasons to do this.  
 14 Either of these reasons on their own would be  
 15 independent reasons to uphold the non-re-enrollment  
 16 decision. Plaintiff seeks an order compelling the re-  
 17 enrollment of S.P. and K.P. for the academic year  
 18 commencing September 6, 2017.

19 In the third amended complaint, the factual  
 20 basis for this request is made starting with paragraph  
 21 88 of the amended complaint. The complaint reads as  
 22 follows: 88. On or about January 2017, after this  
 23 lawsuit was pending, plaintiffs were invited to return  
 24 to STS and were given registration packets for the  
 25 2017/2018 school year. On or about February 17, 2017,

1 and after the expulsion was rescinded, the Court ruled  
 2 that S.P. had the settled legal right to play  
 3 basketball.

4 On or about March 22, 2017, STS handed every  
 5 student another press release from defendant  
 6 Archdiocese regarding the instant lawsuit. This press  
 7 release -- in 91 -- this press release was also  
 8 published and remains on the Archdiocese website and  
 9 was done to intimidate, bully, harass, shame,  
 10 humiliate, and/or embarrass the plaintiffs and were  
 11 retaliatory.

12 92. Plaintiff, S.P. and K.P. registered for  
 13 the 2017/2018 school year. 93. The registration  
 14 application was rejected by STS by a letter dated  
 15 April 7th, 2017, and received by Scott Phillips on  
 16 April 11th, 2017, stating in pertinent part, quote,  
 17 "Your registration is being returned to you pursuant  
 18 to the letter which you received most recently by  
 19 certified mail," unquote.

20 94. The letter in question was sent by the  
 21 Archdiocese months after the lawsuit was pending, and  
 22 it refers to the mission statement in the STS handbook  
 23 and states in pertinent part, "Actions of -- and  
 24 events initiated by you over the past several months  
 25 have directly interfered with the fulfillment of the

1 mission, not only for St. Theresa's School, but also  
 2 for many of its administrative staff, students, and  
 3 parents," unquote. 95. No specific actions are  
 4 described. 96. The only actions taken by plaintiffs  
 5 were to file the instant lawsuit and amendments to  
 6 same.

7 97. These letters by the Archdiocese,  
 8 church, and/or STS, after the Court ruled that S.P.  
 9 would -- had settled legal rights to play basketball  
 10 and among other things after the Court ruled, that the  
 11 settled legal right arose under Title IX.

12 98. Defendant, Archdiocese, church, and/or  
 13 STS, by waiting months before sending this April  
 14 letter and by inviting K.P. and -- S.P. and K.P. to  
 15 return, waived its right to refuse admission to S.P.  
 16 and K.P. for the 2017/2018 year. This April letter  
 17 from the Archdiocese is another form of expulsion for  
 18 filing the instant lawsuit, which violates public  
 19 policy despite the fact that there is no mention of  
 20 expulsion in the letter.

21 In count two of the complaint, it is alleged  
 22 that the defendants Archdiocese and/or STS, in refusing  
 23 to properly address the issues raised by plaintiff and  
 24 by expelling S.P. and K.P., are in breach of contract  
 25 and/or in violation of the provisions of the STS

1 handbook and have acted in bad faith. That count asks  
 2 for specific performance, monetary sanctions, and  
 3 other relief.

4 Paragraph eight of the complaint indicates  
 5 that the Archdiocese and/or STS improperly expelled  
 6 S.P. and K.P. in -- (who was not a plaintiff in this  
 7 action at the time in February 2017), close  
 8 parentheses, and again, in April 2017, in retaliation  
 9 for filing the verified complaint and are in breach of  
 10 contract. Defendant also waived the provision in the  
 11 STS handbook, and this provision is against public  
 12 policy. And this count also seeks specific performance  
 13 and damages.

14 Plaintiffs' application essentially seeks an  
 15 injunction for specific performance of an agreement to  
 16 re-enroll the children. Equitable relief in the form  
 17 of a permanent injunction is an extraordinary remedy.  
 18 Quote, "Permanent injunction requires proof that the  
 19 applicant's legal right to such legal right has been  
 20 established and the injunction is necessary to prevent  
 21 a continuing irreparable harm," Verna v. Links at  
22 Valleybrook Neighborhood Association, 371 NJ Super. 77,  
 23 89 (App. Div. 2004).

24 "Whether a permanent injunction should be  
 25 granted is within the sound discretion of the trial

1 court," Sheppard v. Township of Frankford, 261 NJ  
 2 Super. 5, 9 (App. Div. 1992). "Such relief, though,  
 3 must not be more extensive than is reasonably required  
 4 to protect the parties' interest in whose favors it is  
 5 issued," Verna v. Links, 371 NJ Super. at 89.

6 An injunction -- the circumstances in which  
 7 an injunction may be issued is discussed extensively  
 8 in Van Name v. Federal Deposit Insurance Corporation,  
 9 130 NJ Eq. 433 (Ch. Div. 1941). Although this case is  
 10 an old case, it sets out time-honored precepts which  
 11 have been followed by this Court and other courts of  
 12 equity. At pages 442 to 443, the Court lays out the  
 13 following principles.

14 An injunction is not granted as a matter of  
 15 right, but is -- its granting or refusal rests in the  
 16 sound discretion of the Court under the circumstances  
 17 and the facts of the particular case. It is a strong  
 18 arm of equity. There is no power the exercise of  
 19 which is more delicate, which requires greater  
 20 caution, deliberation, and sound discretion, and which  
 21 is more dangerous in a doubtful case than the issuing  
 22 of an injunction.

23 The remedy of an injunction is an  
 24 extraordinary one and may not be awarded to any suitor  
 25 unless and until his right to it is established by

1 clear and convincing testimony free of all reasonable  
 2 doubts. If the complain -- a complainant's asserted  
 3 right is doubtful or disputed, equity will move  
 4 cautiously before determining to grant remedy by  
 5 injunction.

6 In determining an application for a  
 7 permanent injunctive relief, the Court should be  
 8 guided by the following comprehensive list of factors,  
 9 and in this case some of these factors but not all of  
 10 them applied to this case. Those factors set forth in  
 11 the Sheppard case are, one, the character of the  
 12 interest to be protected; two, the relative adequacy  
 13 of the injunction to the plaintiff as compared to --  
 14 with other remedies; the unreasonable delay in  
 15 bringing the suit for any unrelated misconduct by  
 16 plaintiff by the comparison of the hardship to  
 17 plaintiff if release is denied and hardship to  
 18 defendant if relief is granted; six, the interests of  
 19 others, including the public; and seven, the  
 20 practicality of framing in order for judgment,  
 21 Sheppard, 261 NJ Super. at 10, reciting the  
 22 restatement of 27.

23 In this case, the plaintiff seeks, in  
 24 paragraphs two and eight, specific performance -- a  
 25 decree of specific performance of the -- of what they

1 perceive to be the right to re-enrollment. In the --  
 2 granting specific performance by a decree of  
 3 injunction is also addressed in Van Name v. FDIC, 130  
 4 NJ Eq. 433 at page 443. There, the Court says an  
 5 injunction to restrain a breach of contract often  
 6 operates as and affects all the purposes of a decree  
 7 for a specific performance. As a general rule, to  
 8 enjoin one from violating a contract is an indirect  
 9 method of enforcing its affirmative provisions. The  
 10 jurisdiction exercised in the substance is the same,  
 11 and the general rules apply in one case as the other.

12 Courts of equity will not interfere to  
 13 decree specific performance except in cases where it  
 14 would be strictly equitable to make such a decree.  
 15 The power of injunction committed to this Court is a  
 16 delicate and a most important power and should always  
 17 be exercised with caution, to prevent, not to do  
 18 mischief, to protect and sustain, not to render  
 19 enjoyment of property, of rights in property which are  
 20 uncertain.

21 Specific performance is a discretionary  
 22 remedy resting on equitable principles and requiring  
 23 the Court to appraise the respective conduct of  
 24 parties, Friendship Manor, Inc. v. Greiman, 244 NJ  
 25 Super. 104, 113 (App. Div. 1990), cert. denied 126 NJ

1 321 (1991). Thus, it is explained by the Supreme  
2 Court in Stehr v. Sawyer, 40 NJ 352, 357 (1963), that  
3 the party asking the aid of the Court must stand in  
4 conscientious relation to his adversary. His conduct  
5 in the matter must be fair, just, and equitable, not  
6 sharp or aiming at unfair advantage. The relief itself  
7 must not be harsh or oppressive. In short, it must be  
8 clear that the claim is an equitable one.

9 Here, the Court cannot ignore the conduct of  
10 the defendants. The defendants, as previously stated  
11 by the Court, decided to make -- take the most  
12 confrontational approach, an approach inconsistent  
13 with the goals and objectives of the -- a faith-based  
14 community. They made the affirmative choice to go to  
15 the press and to make this matter public. They made  
16 the affirmative choice to sue 80 -- more than 80  
17 individuals in a community that has approximately 80  
18 families.

19 And their actions are harsh and oppressive,  
20 and they are not entitled to specific performance.  
21 And there is no automatic right to specific  
22 performance. The -- a court must make a complete  
23 evaluation of the complaint, of the claims asserted,  
24 the defenses raised, the hardships imposed on the  
25 parties, the fairness and reasonableness of both

1 parties' conduct, and the availability of other  
2 remedies before determining whether to grant such  
3 relief, Marioni v. 94 Broadway, Inc., 374 NJ Super.  
4 588, 598 to 99 (App. Div. 2005), cert. denied 183 NJ  
5 591 (2005). And quoting from that case at that page,  
6 in general, to establish a right to the remedy of  
7 specific performance, a plaintiff must demonstrate  
8 that the contract is valid and enforceable at law and  
9 that an order compelling specific performance will not  
10 be harsh or oppressive.

11 In Cohen, Estate of Cohen ex rel. Perelman v.  
12 Booth Computers, 421 NJ Super. 134, 149 to 50, (App.  
13 Div.), cert. denied 208 NJ (2011), the Court stated,  
14 quote, "To establish a right of specific performance,  
15 the party seeking relief must demonstrate that the  
16 contract in question is valid and enforceable and that  
17 the terms of the contract are clear."

18 Here, there is no binding contract between  
19 the plaintiff and the defendants for the 2017/2018  
20 school year. Thus, because there is no contract,  
21 there is no legal contractual right to specifically  
22 enforce. Plaintiffs do not cite -- plaintiff does not  
23 cite any case which requires defendants to enter into  
24 a new contract for the 2017/2018 school year to educate  
25 S.P. and K.P. Defendants have refused to enroll S.P.

1 and K.P. for the next academic year starting September  
2 6. This Court cannot specifically enforce a contract,  
3 because there is no contract to enforce. Even if a  
4 contract could be found by a review of the 2016/2017  
5 student handbook, no enforceable right for re-  
6 enrollment could be developed based on that agreement  
7 under the facts of this case, and I will explore that  
8 next. It should be observed at the outset -- okay,  
9 that's fine. That's all I need.

10 THE CLERK: Okay.

11 THE COURT: It should be observed at the  
12 outset that the children were re-enrolled not because  
13 of the conduct -- of their conduct, but because of the  
14 conduct of their parents. There is no dispute that  
15 the children's behavior in any way caused the non-re-  
16 enrollment decision. An examination of the contract  
17 demonstrates that there are several provisions which  
18 give defendants the right not to re-enroll S.P. and  
19 K.P.

20 In analyzing this principle, the Court first  
21 turns to the fact that there is an acknowledgment and  
22 receipt of the parent student handbook by Mr. Phillips.  
23 In that acknowledge -- in that acknowledgment, Mr.  
24 Phillips acknowledged that the handbook is binding on  
25 students and parents during the current academic year.

1 Thus, the terms of this contract were binding on him  
2 and he agreed that that would be the case. He further  
3 signed the statement saying I understand my  
4 responsibility to support the school policies it has  
5 established.

6 Looking at the contract itself, the contract  
7 states -- the handbook states on page 14, "Actions  
8 that violate the law, threaten or cause harm to  
9 another student or staff, disrupt or impede the  
10 welfare and progress of the school community, or bring  
11 discredit to the school will not be tolerated."

12 Clearly, there was an agreement. Although  
13 it applied students, it certainly is a fair implication  
14 applied to parents that they would not disrupt or  
15 impede the welfare and progress of the school  
16 community and the publicity, which was started with  
17 Mr. Kernan, and which no one has -- no one in this  
18 case has testified in any way that the defendants did  
19 anything to encourage this publicity. Deacon Joe  
20 specifically testified they didn't, and the -- but  
21 those wheels were set in motion by the plaintiffs, and  
22 the plaintiffs also chose to appear publicly in  
23 various media outlets, making their children available  
24 for such interviews. And thus, at least in the minds  
25 of the school community -- and it's in letters, it's

1 in the petition which the plaintiff put in evidence,  
2 and in other documents, that this generated a concern  
3 on the parents' behalf that it was interfering with  
4 the school's mission and it was disrupting the school.

5 The further disruption of -- which caused  
6 further controversy is suing 80 individuals in the  
7 school community also. While it's -- certainly, an  
8 individual has the right to sue, lawsuits can have  
9 consequences, and there is no case law that says that  
10 I -- that this Court knows of that seeking damages  
11 from 80 individuals in the school community would not  
12 -- could not result in some kind of reaction to that  
13 if it creates an uproar in that community.

14 The handbook goes on to say on page 14, "If  
15 a student's behavior is generally disruptive or -- and  
16 uncooperative, it will be necessary to ask the parents  
17 to choose another school for the child. We cannot  
18 sacrifice the education of the whole class because of  
19 the disruptive behavior of one student. And the same  
20 would apply as to the disruptive behavior of parents.

21 Now, in this case there is a continuum of  
22 conduct with meetings with various school individuals,  
23 Sister Helene, Deacon Joe and others where they were  
24 shaken by the aggressive conduct of the plaintiffs.  
25 So there were actions far beyond just the publicity

1 that caused this. And one only need to look at the  
2 letters written by Ms. Mullen which threatened time  
3 and time again that if she didn't get her way, that  
4 there would be consequences. And those -- the tone of  
5 those letters, as well as the tone of Mr. Phillips'  
6 meeting with Sister Helene when he was very  
7 confrontational with her, was to control the  
8 situation.

9 One has to wonder why it was so important  
10 for an eighth grader to be valedictorian of the class  
11 that you would upset several people in the school  
12 community over this issue. And while it was all  
13 framed in terms of giving closure to B.P. that's  
14 disingenuous. It's just plainly disingenuous, all of  
15 which has to weigh in the decision.

16 And what's most important of all is that, if  
17 you turn to the statements of Cardinal Tobin, what he  
18 was ultimately concerned about -- and he was the  
19 ultimate decision-maker -- he was concerned about the  
20 peace and tranquility of the community being upset,  
21 and he had to make a difficult decision, one family  
22 which was disrupting the community versus the welfare  
23 of the entire community. And this Court is not --  
24 even on a secular basis, that is a matter within the  
25 discretion of the school.

1           There are other provisions in the handbook  
2           that likewise apply. The handbook goes on, on page 14,  
3           to say, "It is expected that the judgment of school  
4           authorities concerning the discipline of the students  
5           will be respected and supported by parents and  
6           guardians." The decisions of this school were not  
7           respected by parents and guardians. In fact, rather,  
8           they were met with letters threatening consequences if  
9           the decisions weren't changed. It wasn't enough to  
10          discuss them, and there were many times when a  
11          discussion led to a change, but if the discussion  
12          turned out the way that these plaint -- that Mr.  
13          Phillips or Ms. Mullen didn't like, then the  
14          individuals who made those decisions were threatened.

15          The handbook goes on to say, quote, on page  
16          14 -- I'm quoting this -- "If conflict arises, parents  
17          and guardians are expected to discuss the problem  
18          privately, and those concerned, and not in front of  
19          students or other parents or guardians." Here, it was  
20          more than just private. There was an airing out of  
21          this matter in the press and making very public, which  
22          was contrary to the faith-based purpose of this school  
23          educating Catholic youth.

24          Turning to page 16 of the handbook, with  
25          reference to expulsion, the handbook says, "Expulsion

1           is a permanent removal of the student from school.  
2           However, if in the sole determination of the school a  
3           student's conduct or activity reflects such grave  
4           discredit on the school or otherwise presents a  
5           definite impediment to the welfare and progress of the  
6           school community, the student may be expelled without  
7           the school's having taken prior disciplinary measures."

8           In this case, while the actions weren't by  
9           the student, those concepts apply equally to the  
10          parents, and these parents -- these issues were so  
11          grave in the judgment of the school, in the judgment  
12          of Reverend Monsignor Nydegger, Dr. Dames, Sister  
13          Helene, Deacon Joe, and ultimately the Cardinal, that  
14          they had to take steps. And, as I indicated earlier,  
15          there was an appellate mechanism in the handbook. So  
16          from a procedural basis, the plaintiffs waived that  
17          process and did not exhaust the remedies.

18          Because in that paragraph, it says, quote,  
19          "A written request must be made to the principal within  
20          five business days from the date of official  
21          communication by the school administrators of the  
22          disciplinary decision. Failure to request a hearing  
23          within these five business days forfeits the right to  
24          a hearing." So, and that is in the expulsion  
25          paragraph. So they forfeited their right to a hearing

1 under the terms of the contract which the plaintiffs  
 2 want to enforce. So even if that is a contract, they  
 3 don't have any contractual rights. And even if they  
 4 do have the rights, they have violated numerous  
 5 portions of the contract.

6 The contract also indicates at the very  
 7 beginning in the purpose and use of this handbook,  
 8 states specifically, "The principal has discretion to  
 9 take actions other than those specified in the  
 10 handbook." So the principal would have the power to  
 11 recommend expulsion based on the conduct of the  
 12 parents because this -- the handbook itself is --  
 13 provides him with such discretion. So when viewed  
 14 from a contractual perspective, just looking at the  
 15 very terms of the contract itself, there is a  
 16 contractual basis for the non-re-enrollment, if one  
 17 was required.

18 The plaintiff has taken the position that  
 19 there was a pretext, there was a smokescreen, that the  
 20 -- this decision was made because of basketball,  
 21 because of bullying and harassment and intimidation of  
 22 the plaintiffs and the children and Ms. Mullen, and  
 23 this Court is persuaded, and I can't emphasize this  
 24 enough, that the decision to not re-enroll the  
 25 children has nothing at all to do with basketball. It

1 is plainly not related. And I'll give that reason in  
 2 a moment.

3 But in order to get to that decision, I need  
 4 to break down the events in this case into various  
 5 phases, because I think by looking at the phases one by  
 6 one it allows better analysis of the circumstances.  
 7 The first phase is the phase prior to any controversy  
 8 regarding basketball, and in that phase there were  
 9 issues about the alleged inappropriate sexual behavior  
 10 which was addressed, the substitute teacher that was  
 11 addressed, the issue with a gun which was addressed,  
 12 and the valedictorian issue, which was addressed but  
 13 not to the satisfaction of the plaintiffs.

14 But everything doesn't have to be to the  
 15 plaintiffs' satisfaction. Somehow there's a  
 16 suggestion if it's not the plaintiffs' way, it's not  
 17 the right way. And that's not the way any institution  
 18 has to operate. The second phase is the basketball  
 19 phase. The -- in the basketball phase the action was  
 20 taken by Mr. Donovan as commissioner, and there is no  
 21 doubt that there was a certification filed, which was  
 22 wrong. It was false. But that did not have a bearing  
 23 on this hearing. I don't -- and there should not be  
 24 confusion between the two.

25 I don't know why Mr. Donovan gave false

1 testimony. That's not an issue in this case. He did  
2 give false testimony, and this Court took action  
3 because of it and change -- as the Court originally  
4 would not allow S.P. to play basketball, when it got  
5 the correct information, this Court allowed her to  
6 play basketball. So that problem was remedied. But  
7 then in that time, this Court -- Mr. Phillips made the  
8 decision that he had an interesting human interest  
9 story and he wanted his side to get out publicly. To  
10 this -- at this time, I still don't understand why he  
11 had to get it out publicly. He didn't even tell the  
12 Court why it had to be gotten out publicly in a news  
13 story.

14                   This Court can certainly say that its  
15 decision would not be affected by the press, because  
16 this Court only makes decisions based what -- on  
17 what's presented to it in this courtroom. And when it  
18 was told -- when this Court learned in this courtroom  
19 that there were other girls playing on boys' teams,  
20 this Court didn't need to know anymore and was able to  
21 make its own independent decision with the facts. And  
22 that's how this Court's supposed to decide cases, on  
23 the facts that occur in this courtroom.

24 So the Court has not had it explained to it  
25 why this had to be aired out publicly. And given the

1 nature of the various letters that were written by Ms.  
2 Mullen threatening the school, it at least seems that  
3 the argument that the public attention was done for  
4 leverage, because there has been no other applic --  
5 explanation. But if you link those letters or the  
6 publicity, it leads to an inescapable conclusion.

The next phase was the expulsion and reinstatement. The expulsion letter came out on February 1. The Appellate Division ordered the re-enrollment of the children, I think it was on February 2. It may have been the first. A press release was issued by the Archdiocese on that day, saying that they had the right to expel under the terms of the handbook for bringing litigation. Ultimately, that issue was sent back to this Court.

16           But what is significant is even while the  
17           basketball issue was pending before this Court,  
18           regardless of how it was decided, Cardinal Tobin  
19           ordered the children be re-enrolled in the school. So  
20           it had nothing to do with basketball, because if  
21           Cardinal Tobin was concerned that the pending motion  
22           about basketball was going to be decided, he wouldn't  
23           have re-enrolled the children. So it totally escapes  
24           the Court and defies the Court's imagination how, in  
25           the slightest way, the decisions that were made by

1 Cardinal Tobin could have been related to the  
2 basketball. In fact, he did the opposite. When he  
3 found out that there were girls playing on a boys'  
4 team, he said, "I don't want the league games  
5 forfeited." So that argument is just not supported by  
6 the record.

7 So then, when the children returned to  
8 school -- and this is probably the most significant  
9 phase to me -- there was an immediate uproar at the  
10 school. There were Facebook posts, there was the  
11 online petition. There was a fair amount of discord  
12 and upset in the school community because of all of  
13 what individuals in the school viewed as negative  
14 publicity.

15 This Court would be the first to acknowledge  
16 that not everyone joined in the sentiments of those  
17 individuals who felt that the Phillips family went too  
18 far. There were families who supported the family,  
19 and there was a witness before this Court, although I  
20 didn't accept his testimony, was clearly supportive of  
21 the family. And I accept the fact that there were  
22 families that supported the Phillips family. Ms.  
23 Mullen testified about those families, and that does  
24 strike the Court as being believable.

25 But the one inescapable conclusion for the

1 Court is that this was a very polarizing event. And  
2 the polarizing event became worse when 80 individuals  
3 in the school community were sued. But that didn't  
4 happen -- the context in which that happened is very  
5 important. When the children returned to school, the  
6 Court, two days after Cardinal Tobin made the decision  
7 on the 15th to avoid this Court making any decision on  
8 the -- on whether the expulsion could stand or not, he  
9 said -- essentially said to this Court, "You don't  
10 have to bother. I'm going to let them stay this  
11 year." This Court then, on the 17th, two days later,  
12 made the decision to let S.P. play basketball on the  
13 boys' team.

14 Dr. Dames -- and this is the most significant  
15 event to me, most significant of all -- Dr. Dames  
16 scheduled a series of listening sessions with STS  
17 parents on February 22. Those listening sessions were  
18 scheduled for five days after this Court made its  
19 decision on the basketball. Now let's look at what  
20 Dr. Dames wanted to do with those listening sessions.  
21 Did she want to kick the Phillips family out? No.  
22 She wanted to do the opposite. She wanted everyone in  
23 the community to stop attacking each other. She  
24 specifically told -- five days after the basketball  
25 decision, she told parents, "Don't post on the online

1 petition." Teachers were forbidden from posting on it.  
 2 She told parents, "Don't make the Facebook posts."  
 3

4 So the idea that this had anything to do with  
 5 basketball is derailed by the very conduct that was  
 6 taken. At those meetings, and Ms. Mullen attended the  
 7 first meeting, Dr. Dames said, let's move on, let's  
 8 move back to peace and harmony and tranquility. Let's  
 9 make this the same faith-based community that's made  
 10 this a wonderful place for all the children. Let's  
 11 make it, continue -- these are my words, not hers.  
 12 But let's continue to make it this wonderful community  
 13 that the children can enjoy and thrive in and get the  
 14 benefit of the faith-based mission that we have.  
 15

16 So what happens the next day? What happens  
 17 the very next day? The very next day, Ms. Mullen  
 18 hand-delivers to the Cardinal a letter saying, if you  
 19 don't meet with me in six days, I'm going to sue the --  
 20 I'm going to sue everybody. So you've got six days,  
 21 Cardinal. Now, you know, not taking into consideration  
 22 how busy his schedule is and the responsibilities that  
 23 he has for somewhere in the neighborhood of 1.3 to 1.6  
 24 million Catholic lives. To demand that the Cardinal  
 25 meet with her in six days or it -- or a lawsuit would  
 be filed is relevant to the Court in the sense that it  
 is a reflection of an overly aggressive approach where

1 a family has a range of alternatives to solve a  
 2 problem and they choose, of all the range of  
 3 alternatives, the most controversial, the most  
 4 incendiary alternative.

5 Now, I'm mindful of the fact that the  
 6 Cardinal did not get that letter, did not see that  
 7 letter. But it bespeaks an intent and a purpose by  
 8 the -- by Mr. Phillips and Ms. Mullen. And this case  
 9 is all about stopping that intent and purpose. Then,  
 10 six days later, the lawsuit was filed, on March 1, as  
 11 promised. 80 -- more than 80 individuals in the  
 12 community were sued in this very small community,  
 13 creating a further uproar.

14 At that point, Reverend Monsignor Nydegger,  
 15 who doesn't function in this area, he doesn't oversee  
 16 the schools, he's got a lot more responsibility,  
 17 starts paying attention to this and comes to the  
 18 conclusion that this is a threat to the mission of the  
 19 community, and that's one of his central purposes as  
 20 vicar general and -- and I might get this wrong  
 21 because I'm doing it from memory -- keeper of the  
 22 curiae. But he's got this religious mission that he's  
 23 trying to make certain will be honored by the  
 24 community. And for that reason, for those faith-based  
 25 reasons he testified about why he got involved. Dr.

1 Dames was likewise motivated by that, and certainly  
 2 the Cardinal's testimony cannot be refuted, that that  
 3 is -- that he felt he had to react.

4 But the point is that if they wanted to do  
 5 it for these reasons, the Cardinal wouldn't have  
 6 reinstated and Dr. Dames wouldn't hold the meeting to  
 7 calm everyone down to get to the sense of community.  
 8 But essentially, what the Phillips family did by  
 9 writing a letter the next day and suing a few days  
 10 letter is saying, "We're not interested in calming  
 11 things down. We're going to keep the controversy  
 12 going." So, and I think the tone is what's important  
 13 to look at. Not the substance, the tone.

14 Now, there has been discussions during this  
 15 case that the plaintiff has taken the position that  
 16 the expulsion letter, which was written by -- or the  
 17 non-re-enrollment letter, which was written by Dr.  
 18 Dames, is not proper because the Archdiocese does not  
 19 have standing. The testimony of Monsignor Nydegger,  
 20 of Dr. Dames about ACES, about the nature of the  
 21 agreement between the Archdiocese and how they oversee  
 22 the community of -- does this individual need some  
 23 water? Ask him if he needs some water.

24 UNIDENTIFIED SPEAKER: Oh. Oh, no. Thank  
 25 you, sir. Sorry, Your Honor.

1 THE COURT: you want to get him some water?  
 2 Somebody get him some water. You --

3 Anyway, so the ACES agreement gives  
 4 authority to the Archdiocese, the courts consider.  
 5 But even if ACES doesn't, there's a superintendent of  
 6 schools, there's a structure, it's a de facto  
 7 structure. To say that that's not the structure is to  
 8 defy reality.

9 But in an abundance of caution, this Court  
 10 had that letter written by the -- asked that a letter  
 11 be written by the school to verify that this had the  
 12 school's endorsement, and such a letter was written.  
 13 I've gotten and I received an objection to allow that  
 14 change many times in this case, and I indulged the  
 15 plaintiffs on a number of issues so that I could get  
 16 to the substance of this case and I'd get to the  
 17 merits.

18 Certainly, I overlooked the -- on a few  
 19 occasions their non-cooperation in depositions. I  
 20 allowed the initial order to show cause to be amended  
 21 without the necessity of further papers, and did other  
 22 things to accommodate the plaintiffs. And so I've  
 23 been criticized for giving the same consideration to  
 24 the defendants, but I always tried as best I could to  
 25 be fair to everybody, and I've said that several times.

3 THE COURT: Yeah, we can. I'm not that far  
4 from being finished --

5 MR. WESTRICK: Okay.

6 THE COURT: -- but we can take five minutes.

7 MR. WESTRICK: Thank you very much.

8 THE COURT: That's fine. Okay, I'll be back  
9 in five minutes and I'll --

10 MR. WESTRICK: Thank you, Judge.

11 THE COURT: -- I'll wrap up then.

12 (Off the record from 4:32 p.m. to 4:43 p.m.)

13 COURT OFFICER: Okay, everyone can be seated.  
14 THE COURT: So we're back on the record in

15 Phillips v. Archdiocese of Newark, C-248-16. And I'll  
16 hopefully now finish my opinion. And I only have a  
17 court reporter until six o'clock, so I need to try to  
18 get this done. So I think that the principal last  
19 remaining issue is the issue of due process.

1 violated the student-parent handbook while the  
2 plaintiff was on disciplinary probation. The  
3 misconduct included vandalism of a teacher's home,  
4 slashing of a teacher's tires, making prank calls to a  
5 teacher, allegedly selling illegal steroids, and  
6 allegedly urinating in a student's locker.

15                   In Don Bosco, the Court established a two-  
16 prong fundamental fairness test which private high  
17 schools must follow when expelling students for  
18 misconduct. One, the private high school must adhere  
19 to its own established procedures for dismissal, and  
20 two, in executing the dismissal, the school must follow  
21 a procedure that is fundamentally fair, Don Bosco, 322  
22 NJ at 31 to 21.

In Don Bosco, the procedure that was followed was a series of various meetings with the student and the administration, and then a committee meeting of

1 various representatives of the school and then with the  
2 appeal, a further meeting of that committee. There was  
3 not a trial-type hearing where witnesses testified, and  
4 that kind of hearing, which is akin to the kind of  
5 process in this case, was found to be proper and to be  
6 a proper hearing, and it was also found to be  
7 fundamentally fair, as I indicated earlier.

8 The parents aren't entitled to a hearing  
9 under the student handbook. There is nothing in the  
10 handbook that entitles the parents to a hearing for  
11 their conduct. And certainly, there are cases, both in  
12 the ecclesiastical decisions, and I'll deal with a  
13 secular decision in a moment, which -- fourth court,  
14 fourth state -- which says that the parents -- the  
15 expulsion based on parent conduct is not reviewable,  
16 and doesn't require -- essentially, require due  
17 process.

18 But even assuming that due process was  
19 required, there was certainly a fair hearing of the  
20 Phillips family grievances. I've gone through all  
21 those various meetings with Deacon Joe, Sister Helene,  
22 Dr. Dames, Sister Butler. They were able to talk to  
23 people at all levels. The -- there was a further  
24 meeting, and I realize others attended the meeting, but  
25 there was a meeting that Ms. Mullen attended where Dr.

1 Dames asked everyone to restore the community to peace  
2 and tranquility, and in effect that request was  
3 ignored.

4 And I think it's important, and probably the  
5 most important part of this, what Dr. Dames said is  
6 that the subsequent filing of the litigation showed  
7 that with respect to the continuum of conduct that the  
8 Court has addressed in its opinion, that it wasn't  
9 going to change. And since it wasn't going to change,  
10 the decision had to be made for the benefit of the  
11 entire community. And this decision had nothing to do  
12 with the children. It was all because of the parents.

13 So, essentially, Dr. Dames' efforts to  
14 restore peace and tranquility in the community fell on  
15 deaf ears. You know, Dr. Dames was concerned that the  
16 spiritual aspects of the community were being  
17 destroyed. And she wanted everyone, not just the  
18 plaintiff -- Mr. Phillips and Ms. Mullen, but everyone in  
19 the community, to stop.

20 And in terms of fundamental fairness,  
21 everything has been heard. But assuming that for the  
22 sake of argument due process was not totally followed,  
23 there was an appellate mechanism in the handbook, and  
24 that remedy was not exhausted prior to coming to this  
25 Court, so that any procedural right which the plaintiff

1 may have had was waived. They had five days to do it,  
 2 they decided instead to come here.

3 In -- now, in the Don Bosco case, starting on  
 4 page 14, the Court said Don Bosco was clearly acting as  
 5 a private organization, not as a state agency. On page  
 6 18, it went on to state a private primary or secondary  
 7 school is generally considered a private association  
 8 rather than the function of the state. The procedural  
 9 rights inherent in membership with private association  
 10 and the termination of membership are substantially  
 11 less than those of a public school or public university  
 12 student. Membership in private organization attaches  
 13 somewhat different rights than, quote, "membership,"  
 14 unquote, in a private university.

15 The quote went on to say that membership in a  
 16 private organization receives the least procedural  
 17 protection in our judiciary. Under all of these  
 18 circumstances, the Court finds that the manner in which  
 19 the Phillips grievances were addressed time and again  
 20 are fundamentally -- were fundamentally fair, and there was  
 21 an effort always to ameliorate their concerns, even up  
 22 to February 22nd, which was rejected -- which effort  
 23 was rejected the very next day. And even though it may  
 24 have been in a meeting with others, it was rejected.

25 In Allen versus Casper, 87 Ohio App.3d 338,

1 62 NE 367, Appellate District of Ohio (1993), an  
 2 appeals court in Ohio affirmed the grant of summary  
 3 judgment dismissing a parent's action against a private  
 4 elementary school and officials because the school  
 5 officials did not violate the parent's contractual  
 6 rights and acted within its discretion when they  
 7 expelled a child midyear -- oh, actually, children  
 8 midyear based on the parent's failure to comply with  
 9 the terms of the handbook.

10 In Allen, the plaintiff's daughter complained  
 11 of classmate's inappropriate behavior and conduct. The  
 12 alleged improper behavior involved male classmate  
 13 inappropriately touching plaintiff's daughter and a  
 14 student with dental malformation inadvertently spraying  
 15 saliva on plaintiff's daughter. Plaintiff's mother,  
 16 after contacting school administrators, was  
 17 dissatisfied with the private school's internal  
 18 handling of these incidents. Plaintiff became angry  
 19 and called school administrators, quote, "un-Christian,  
 20 and accused them of working with the devil," unquote.  
 21 And that's -- during a meeting with the school  
 22 administrator, the pastor and the plaintiff, the mother  
 23 conceded that she insulted the administrator. As a  
 24 result of the foregoing, the school administrator  
 25 determined that the parties could no longer develop a

1 working relationship with plaintiff's family, and  
2 plaintiff was asked to remove the children from school.  
3

4 In affirming the trial court's grant of  
5 summary judgment, the Appellate Court ruled that the  
6 relationship between the plaintiff and the defendant  
7 private Catholic school and its administrators was a  
8 contractual relationship pursuant to the school's  
9 handbook and policies, and that those express terms may  
10 govern the circumstances under which a student may be  
11 expelled. The Court opined, quote, "because contracts  
12 for private education have unique qualities, they are  
13 to be construed in a manner which leaves school board  
14 broad discretion to meet its educational and doctrinal  
15 responsibilities. Absent a clear abuse of discretion  
16 by the school and the enforcement of its policies and  
17 regulations, courts will not interfere with these  
18 matters."

19 And the Allen case bears substantial  
20 similarity to this case. It would bear noting in this  
21 case that when Reverend Monsignor Nydegger was about to  
22 make his recommendation to the Cardinal, he spoke to  
23 Deacon Joe, he spoke to Reverend Joe, he spoke to Dr.  
24 Dames, and by speaking to all of these people, he was  
25 convinced that the school's ecclesiastical mission had  
been upset and that it had to be remedied. And

1 ultimately, when he and Dr. Dames went to the Cardinal,  
2 each and every event doesn't need to be known to the  
3 Cardinal.

4 What was known to the Cardinal was that he  
5 extended his, as he put it, his mercy to this  
6 situation. And as he said, he was astonished that it  
7 resulted in the reaction of the plaintiffs. That's  
8 what he really needed to know. And that reaction to  
9 the Cardinal was within a period of two weeks from the  
10 time he did it. There was no effort to be conciliatory  
11 in that time period, there was only an effort to be  
12 incendiary. There was an effort -- there was a letter  
13 written on the -- the decision was made on the 23rd.

14 A week later, on the -- I mean on the 15th.  
15 A week later, on February 22nd, Dr. Dames had her  
16 meeting, and then one day later, eight days from the  
17 time the Cardinal extended his mercy, rather than  
18 trying to find a way to be conciliatory, a threat of a  
19 lawsuit was made, and -- even though he didn't know a  
20 letter was written to him threatening that lawsuit, and  
21 it was ultimately filed.

22 And it's really -- and in terms of his --  
23 this is -- he didn't know about that letter. So -- but  
24 what he did know is he did know about the lawsuit being  
25 filed two weeks after his decision was made, and he was

1 truly disturbed that the peace and tranquility of the  
2 community was being upset so -- and these are my words,  
3 not his, but -- so soon after he made his decision.  
4 And the position that he would need to know more under  
5 these circumstances, when this circumstance was created  
6 by Mr. Phillips and Ms. Mullen, rings hollow.

7 An issue was raised with respect to a waiver  
8 of the right to not -- of -- by the plaintiffs not to  
9 re-enroll the children. And factually, that waiver  
10 argument has no merit. The application for re-  
11 enrollment was sent out in January. The application --  
12 after the application was sent out, Cardinal Tobin  
13 allowed the children to be re-enrolled.

14 But what also happened after that application  
15 was sent out is that there were actions taken by the  
16 publicizing of this case, at least according to what  
17 the state of mind is of the Archdiocese  
18 representatives, and there were actions taken with the  
19 lawsuit, but -- and other action, and that the upset of  
20 the community was intensified long after the  
21 application was sent to the plaintiffs. So the facts  
22 had changed since the offer was extended. And when the  
23 re-enrollment application came to the attention of the  
24 defendants' representatives under the circumstances  
25 that existed then, they declined to accept that

1 application. There -- so there was no waiver by  
2 sending out the application, because it was sent out  
3 before all these activities.

4 Now, there are some other equitable  
5 considerations which the Court would like to touch on  
6 briefly. First of all, even if there was a legal right  
7 to success on the merits, which, by the way, as I said  
8 earlier, would have to be established both under the  
9 law of specific performance as well as under the law of  
10 injunctive relief by clear and convincing evidence, and  
11 the -- that the existence of a contractual right can't  
12 be sustained by a preponderance of the evidence, no  
13 less the clear and convincing evidence standard. But  
14 there are also other bases on which an injunction would  
15 not be appropriate.

16 It is axiomatic -- quote, "It is axiomatic  
17 that injunctive relief should not be entered except  
18 when necessary to prevent substantial, immediate, and  
19 irreparable harm," unquote, Garden State Equality v.  
20 Dow, 433 NJ Super. 347, 351 (Law Division 2013), aff'd  
21 216 NJ 214 (2013). It is -- in the Don Bosco case, the  
22 Court indicated that a student removed from a private  
23 high school had immediate access to public schools for  
24 education, thereby in effect mitigating any irreparable  
25 harm, 322 NJ Super. at 614. The Court would note that

1       beyond just having the availability of public  
2       education, to the extent that religion is important,  
3       CCD and other religious outlets are available, so there  
4       are ways to avoid any irreparable harm in this case.

5       In terms of balancing the equities in this  
6       case, because that's one of the things the Court should  
7       also look at, the comparison of the hardship to  
8       plaintiff if relief is denied and hardship to the  
9       defendant if relief is granted, the Court is mindful of  
10      the fact that St. Theresa's is the only school the  
11      children have known. The Court is troubled that it is  
12      put in the position where the children, according to  
13      Mr. Phillips -- and I accept this part of his testimony  
14      -- would be heartbroken that they could not participate  
15      in the only school community that they've ever known.

16      But I have to weigh against that the  
17      disruption and the fracture of the community. And when  
18      I look at this from just a practical perspective, in  
19      essence, the administration was on edge because of all  
20      of these events. The students were on edge. The  
21      parents were on edge. If I allow the children to go  
22      back, it is only going to continue to upset the peace  
23      and harmony in this community.

24      And I also bear in mind that if the children  
25      prefer not to go to public school, and I recognize this

1       is the last year of S.P.'s education at the school and  
2       she's got her dance and her trip to Hershey Park and  
3       all these events that she's been so looking forward to  
4       for a period of time, that she may go to a different  
5       Catholic school if she could, which would offer the  
6       same kind of activities. And, you know, she, from  
7       everything that I've been told during this case, she  
8       has adjusted to what's happened in this case, and I  
9       would hope she would be able to adjust elsewhere, as  
10      would K.P. So that's an issue to me.

11      One of the other issues I have to look at is  
12      whether an injunction would be adequate. And in terms  
13      of the adequacy of the injunction, the Court is  
14      concerned about what's called the continuing  
15      superintendents doctrine. It's a doctrine that applies  
16      in specific performance cases, and essentially what  
17      that doctrine states is specific performance of a  
18      contract will not be awarded, quote, "where the  
19      execution of its decree for specific performance would  
20      entail continuing and constant superintendence over a  
21      considerable period of time," period, unquote,  
22      Fleischer v. James Drug Stores, 1 NJ 139, 149 (1948).

23      How that's relevant in this case is the  
24      following. I have served on the bench for a  
25      considerable period of time. This is the single most

1 contentious case in which I have ever been involved. I  
2 have had more applications in this case than any other  
3 case I've been involved. And before here, I sat in the  
4 Family Division, which is known for contentious  
5 litigation, because it has such a profound effect on  
6 people's lives. But this too has a profound effect on  
7 children's lives, and it's something that I've always  
8 taken very seriously about this case.

9 Before the trial in this case, there were  
10 five applications for a stay of the Appellate Division.  
11 Or there were three that were actually made, five that  
12 were requested. There have been other applications of  
13 the Appellate Division in this case. I've had numerous  
14 applications. I have taken phone call after phone call  
15 after phone call in this case, during vacations of both  
16 counsel, and there always seems to be a sense of  
17 urgency about this case. There is nothing that leads  
18 this Court to believe that that, for lack of a better  
19 word, hysteria is going to end once -- if I sent the  
20 children back. And I cannot -- this Court cannot be in  
21 the position where it has to continually supervise what  
22 goes on.

23 The brief filed by the plaintiff -- I  
24 unfortunately brought all my papers back in chambers --  
25 you know, characterized the defendants' conduct as

1 deplorable. You know, I believe the word "shameful"  
2 was used. There were a number of incendiary words  
3 used. I don't have any confidence that if I sent the  
4 children back that the contentious litigation would  
5 end. So -- and it would be very difficult, and this  
6 also is in accordance with what's -- one of the things  
7 I have to decide -- would be very difficult for this  
8 Court to fashion an order that would prevent it.

9 So, for all of the reasons that I've just  
10 gone through, I am going to deny the application for  
11 re-enrollment. To -- stop. Let me rephrase that. I  
12 am going to deny the application to restrain the re-  
13 enrollment decision, and I'm going to allow the non-re-  
14 enrollments decision to stand. So I will enter an  
15 order to that effect. My law clerk is out today but  
16 I'll get that order out quickly. I'll have to get  
17 somebody to help me with it tomorrow. Okay. With  
18 that, the record's -- anything else, counsel?

19 MR. WESTRICK: No, Your Honor.

20 THE COURT: Okay. With that, the record's  
21 now closed.

22 MR. WESTRICK: Thank you.

23 MS. McCREA: Thank you.

24 (Trial concluded at 5:12 p.m.)

CERTIFICATION

I, TERRY L. DeMARCO, the assigned transcriber, do hereby certify the foregoing transcript of proceedings from pages 1 through 56, line 19, on CourtSmart, Index No. from 1:51:18 to 3:30:07, is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings, as recorded.

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